



Travieso Evans Arria Rengel & Paz

CARACAS • VALENCIA • MARACAIBO • PUERTO LA CRUZ • MATURIN

Olga Nass De Massiani
Mercedes Parra De Alexandre
Luis A. Tinoco Arria
Eduardo Travieso Uribe
Pedro A. Rengel Núñez
Oscar Ignacio Torres B.
Simón Guevara Camacho
Aníbal A. Veroes
Manuel Aquiles Iturbe A.
Henrique Parra Gabaldón
Jennifer Jahnke Rangel
Javier E. Ruan S.
Julio César Pinto
Olga Helena Massiani N.
José Ramón Sánchez T.
Pedro Garroni Requesens
Ayleen Guédez González
María Fernanda Pulido
Hernando H. Barboza Russian
Rafael Rouvier Matos
Lianeth C. Quintero Weber
Wesley J. Soto López
Jose Gregorio Veliz
Francisco Alvarez Silva
Karla Andreina Peña García
Eduardo I. Ortiz Tosta
Andrés E. Meleán Nava
Rafael Piña Ysea
Saul O. Silva Echenique
Indira Falcón Santana
Cristina Cortejoso Shiera
Díoscuro Daniel Camacho
Polo Eduardo Casanova
Andreina Lusinchi Martínez
Enrique Travieso Itriago
Frank Mariano Betancourt
Diego Alexandre Parra
Manuel Polanco Herrera
Irene P. Gotera Ocando
Alexandra M. Tinoco Mendez
Eugenia Gánem Landa
Ana Cristina Conde Bachs
Vittorio Di Ruggiero Ciulla
Cheily C. Chercia Sánchez
Reyna Luzardo Reyes

Edificio Atlantic, Piso 6
Av. Andrés Bello, Los Palos Grandes
Apartado De Correos 68278
Caracas 1060 Venezuela

Teléfono: (58-212) 918-33.33
Telefax: (58-212) 918-33.34
E-Mail: legal@traviesoevans.com
Web: www.traviesoevans.com

Courier Mailing Address;
C/O Zoom Internacional
Ccs 4512
P. O. Box 025801
Miami, Florida 33102-5801

Aristides Rengel Romberg
Francisco L. Paz Parra
Julio Velutini Octavio
Juan José Aguerrevere S.

Benner C. Turner
Mariela Céspedes

Maturín, Estado Monagas
Teléfono: (0291) 643.09.84 / 12.91
Telefax: (0291) 643.58.31
E-Mail: ccc@traviesoevans.com

Valencia, Estado Carabobo
Teléfonos: (0241) 825.47.93 / 64.56
(0241) 826 28 21
Fax: (0241) 826.33.09
E-Mail: jcp@traviesoevans.com

Puerto La Cruz, Estado Anzoátegui
Teléfono: (0281) 286.86.83
Telefax: (0281) 286.78.98
E-Mail: pgr@traviesoevans.com

Maracaibo, Estado Zulia
Teléfono: (0261) 792.02.61
Telefax: (0261) 793.57.54
E-Mail: hbr@traviesoevans.com

Tehar S.C.
Propiedad Intelectual
Rosa Mejuto Gordon
Reinaldo Badillo García
Teléfono: (58-212) 918.33.44
Telefax: (58-212) 918.33.43
E-Mail: tehar@tehar.com

We have prepared this paper as an informative source, with the caveat that it is not intended to be an exhaustive coverage of all aspects of Venezuelan law which is subject to frequent and unexpected changes. The purpose of this document is merely informative and should not be construed as a legal advice on any aspect.

1. Economy highlights

The Venezuelan economy is highly dependant on its oil industry, which accounts for close to 80% of all exports and 50% of the Federal Government's budget. Venezuela's oil production is a matter of contention but is largely believed to be near 2.5 million bbl/day. The record oil prices of the last decade have generated a large influx of cash into the economy, which via massive government spending and the subsequent monetary expansion spurred substantial economic growth. Elevated federal spending has also build up considerable inflationary pressure that is currently near 25%, at the same time leading to ever increasing levels of imports. Monetary policy by the government has tried to contain the effects of the expansionary fiscal policy by implementing dual exchange controls and other such measures.

However, the fall of oil prices experienced in the aftermath of the global financial crisis has had a significantly negative impact in the Venezuelan economy. With reduced government oil revenue the pattern of increased spending and imports, which fueled prior growth, becomes unsustainable. This has caused a decrease in GDP of 5% in 2009 and close to 3% in 2010 and led the government to devalue the currency in a bid to recover spending capacity. For 2011 the GDP is expected to grow 3%. At the same time throughout these years there has been an aggressive expansion of the government's participation in the economy by nationalizing companies and industries in the banking, agricultural, retail, tourism, oil, cement and steel sectors. Nevertheless, due to upcoming elections in 2012, there is a lot of liquidity and expenditure in the Country.

2. Foreign exchange control regime

The foreign exchange control regime centralizes in the Venezuelan Central Bank (“VCB”) the purchase and sale of foreign currency in Venezuela and establishes the official rates of exchange to be used for these transactions. Access to foreign currency is subject to the authorization of the Commission for Administration of Foreign Exchange (“CADIVI”). The foreign exchange control regime does not regulate or provide for alternatives for the free commercialization of foreign currency by individuals/private entities in Venezuela or for a rate of exchange other than the official rates.

Purchase of foreign currency for payment of imports of goods and services, foreign private debt, dividends, royalties or technological fees, must be done from the VCB, through commercial banks and other currency exchange operators, once CADIVI has granted the necessary authorization. Any person wishing to make use of The Regime, whether as purchaser or seller of foreign currency, must register in the Registry of Users of the Foreign Currency Administration System (“RUSAD”), for which the presentation of a voluminous amount of corporate documents, statements, returns, tax and other clearances, etc. is required, all as provided in the pertinent Administrative Resolutions issued by CADIVI.

The Norms establish that the operations of purchase and sale in Bolívares, of securities denominated in foreign currency issued or to be issued by the Republic, its decentralized entities or any other entity, may only be carried out through the intermediation of universal banks, commercial banks and savings and loans entities, which in turn must act through the VCB's System for Transactions of Securities in Foreign Currency (“SITME”), in the terms and conditions established by the VCB, only with the securities denominated in foreign currency determined by the VCB and within the bands of prices in Bolívares for the purchase and sale to be published daily by the VCB.

3. Corporate structure

There are several vehicles that may be used in Venezuela to conduct business (*Sociedad* or *Compañía Anónima*, Limited Liability Companies (“SRL”), domiciliation of branches of foreign corporations, etc.). We will explain the general procedure to incorporate a Sociedad Anónima (“SA”) which is the most common corporate vehicle used in Venezuela. These steps with certain variations apply for the setting up of other vehicles.

3.1. *Sociedad or compañía anónima*

The SA is a legal entity different from its shareholders. The responsibility of the shareholders is limited to their equity in the company. Shareholders are not liable to third parties contracting with the SA. Venezuela has not developed the concept of piercing the corporate veil although there have been some judicial precedents in this sense which will be explained in the following section.

The SA is the most common manner of conducting business in Venezuela and therefore, it improves the understanding of the structure by third parties. It's legal and tax regime is clearly defined in Venezuelan Law.

The SA is subject to the standard 34% progressive tax rate. Additionally, as of January 1, 2001, there is a 34% proportional dividend tax on any dividend paid out on the difference between the net financial income and the net taxable income of the SA.

The incorporation of the SA and any subsequent capital increase is subject to a stamp tax of 1% or 10% of the corporate capital. The applicable percentage will depend on the Commercial Registry chosen for incorporation of the company.

Disadvantages

The distribution of profits to the shareholders must be in the form of dividends. Dividends shall only be paid from liquid and collected profits after the SA determines the same at the end of each fiscal year (trapped cash issue).

Procedure for incorporation of a SA.

- (i) The founding shareholder of the company, must grant a power of attorney in favor of several persons (three or four is usual and preferably domiciled in Venezuela although not necessarily Venezuelans) to subscribe the shares of the SA on its behalf. Such power does not only include the power to incorporate the company but also the authorization to register the new foreign investment, as required by Venezuelan law, with the Superintendence of Foreign Investments ("SIEX") and the authorization to obtain the Fiscal Registry Number ("RIF") of the SA which identifies it as a Venezuelan taxpayer. In Venezuela two shareholders are necessary at the moment of incorporating the company, therefore our practice is (assuming for instance that the total capital is divided into 100 shares) to have the foreign company subscribe 99 shares while a member of our firm subscribes (in his/her own name) one share, which is transferred to the foreign company immediately upon incorporation of the SA, thus becoming the foreign company the sole shareholder of the company.

We may provide you with a draft of such power of attorney which may be used in incorporating any of the vehicles described herein and also with a draft of the Charter/By-laws of a SA.

Such power must be first acknowledged before a Notary Public and subsequently "apostilled" to be effective in Venezuela. Venezuela became a party to the Hague Convention on 1998 by passing the Law approving the Treaty Eliminating the Legalization of Foreign Public Documents. According to this Treaty the only formality that will be required in order to certify the authenticity of the signature on a given document, the capacity of the signer of the same and the identity of the seal fixed thereon will be the "Apostille" issued by the competent authority of the country in which the document was executed. Therefore, such an "Apostille" must be fixed on the power of attorney in order for the same to be valid in Venezuela. Upon receipt of the executed original, this power of attorney will be translated into Spanish language by a Venezuelan Public Interpreter (we usually take care of this translation).

- (ii) The name of the SA must be chosen and checked with the Mercantile Registry to verify its availability. If available, the name can be reserved for a limited period of time (30 days). We recommend not making any remittance of funds (step (iii) below) until the name of the company being formed has been reserved, to avoid possible subsequent problems in having the bank re-issue new documentation in favor of the name finally available.
- (iii) The funds representing the corporate capital of the SA must be sent into Venezuela by wire transfer into a Venezuelan bank account opened in the name of the SA. You may choose the bank of your preference always provided that it has a branch in Venezuela. The account will remain blocked until the SA is officially inscribed in the Mercantile Registry and operating instructions are issued to the bank. It is important that the name of the shareholder be clearly mentioned on the bank transfer slips of the remitting bank as the party remitting the funds, or otherwise the funds may be tied up for weeks and we may have trouble registering the foreign investment.
- (iv) Also, in order to form the SA, evidence that at least 20% of the amount of capital subscribed has been actually paid-in must be presented to the Mercantile Registry. Such evidence would be a bank deposit slip issued in the name of the SA being formed, accompanied by a letter from the local bank advising the Mercantile Registry that such funds have been paid by the founding shareholder into the SA under incorporation "*en formación*" and will remain frozen until the SA is actually registered. Also, in order to register the foreign investment with the appropriate authorities, it is necessary to obtain from the bank a letter to the effect that the equivalent in foreign exchange (e.g., dollars) was actually transferred into Venezuela by the foreign shareholder of the company being formed.

- (v) Subsequently, the Charter/By-laws of the SA signed by the incorporators, must be presented to the Mercantile Registry, together with documentary evidence (usually the confirmation of the transfer and the letter issued by the bank certifying the receipt of the funds) showing payment of the portion of the subscribed capital with which the SA is to commence operations. Upon presentation of the corporate documents to the Mercantile Registry, a filing fee equivalent to 10% or 1%, depending on the chosen Mercantile Registry for the incorporation of the company, of the corporate capital must be paid. The same fee is applicable to capital increases as mentioned above.
- (vi) Once the SA is formed, the next step is to obtain its RIF from the Venezuelan Tax Authorities.
- (vii) According to Decree 2095 dated February 13, 1992, containing the Regulation of the Common Regime for the Treatment of Foreign Capital, Trademarks, Patents, Licenses and Royalties (the “Decree 2095”), the foreign investment of the shareholders in the SA must be registered before the SIEX within 60 days of its incorporation. Also, the SA must obtain from SIEX the Certification of Qualification of Company. For these purposes we will need certified copies of the Charter/By-laws of the shareholders, duly “apostilled” and translated into Spanish language by a Public Interpreter in Venezuela.

Limitations on liability (piercing corporate veil)

The applicable general principle in Venezuela is that the liability of corporations is limited to their own corporate assets and up to the amount of their corporate capital. These companies, exclusively, not their shareholders, are directly liable with respect to actions filed by third parties. The shareholders of a corporation incur liability solely within the amount of their shares and not with respect to third parties, but exclusively before the company.

By virtue of the foregoing, certain North American doctrine has sustained that in case of fraud and/or willful misconduct, shareholders of a corporation may be personally and directly liable, without taking into account the corporate structure and their indirect and limited liability (“piercing-the-corporate-veil doctrine”)¹. Such doctrine has not been (at least until recent judicial decisions) of general application in Venezuela. There are only certain matters in which principles of the said doctrine may be applied and which we believe must be deemed exceptional, such as: (i) labor matters, (ii) tax matters, (iii) banking matters, (iii) insurance and (iv) antitrust.

However, recently there have been some judicial decisions that have applied the piercing-the-corporate-veil doctrine. On May 14, 2004 the Constitutional Chamber of the Supreme Tribunal of Justice ruled that any member of an Economic Group or Conglomerate may be bound by the effects of a judicial decision issued within a judicial procedure opened against one of the members, despite the fact that such other companies have not been a party to such procedures. The Chamber sustained the legality of Economic Groups or Conglomerates but at the same time ruled that sometimes such groups are created to dilute the liability of their members with fraudulent intentions.

On a more recent decision referring to a bankruptcy procedure, the Fourth Court on Civil and Mercantile Matters of Caracas declared the piercing of the corporate veil of a corporation belonging to an Economic Group ruling that behind the apparent legality of the whole corporate structure, the subjacent intention was to frustrate the rights of the creditors to obtain payment of their claims within the bankruptcy procedure.

Corporation, partnership, other forms of organization

As mentioned above, there are several types of corporate vehicles that may be used in Venezuela to conduct business and carry out activities. Aside from *sociedades* or *compañías anónimas* (which would be the equivalent to a corporation), we can mention the following:

3.2 Partnership or *compañía en comandita por acciones*

¹ Black’s Law Dictionary, West Publishing Co, St. Paul, Minn, 1990, page 1147.

The *compañía en comandita por acciones* (“CCA”) is a partnership in which there are two types of partners, the *comanditantes* (general partners) who are jointly, severally and unlimitedly liable for the obligations assumed by the partnership, and do not have their liability limited to the amount contributed to the capital and the *comanditarios* (limited partners) whose liability is limited to the amount of capital contributed by them (reason why investors use special purpose companies to act as active partners in order to isolate the unlimited liability in such special purpose company). The capital of the limited partners (*socios comanditarios*) is divided into shares. The CCA is an entity separate from its partners.

The CCA is managed by the active partner who in turn will have its own internal decision making process.

The legal and tax regimes are very similar to that of an SA.

Disadvantages

This is a vehicle seldom used in Venezuela, reason for which there could be issues arising when dealing with third parties that do not fully understand the scope of the partnership and the manner in which it works. Also, the structure and functioning of the Comandita por Acciones is not compatible with sole shareholders entities because there must always be two types of partners.

3.3 Limited liability company or *sociedad de responsabilidad limitada* (“SRL”)

The SRL is similar to an SA in the sense that it is a separate entity in which the responsibility of the partners is limited to their equity participation but the capital is divided in participation rights instead of shares.

The main differences with the SA are: (i) the ownership rights cannot be represented in negotiable instruments (as shares), (ii) a maximum corporate capital of Bs. 2,000.00 (equivalent to US\$ 465 as the current official rate of exchange of Bs. 4.30 per US\$ 1.00), and (iii) the partners may commit to accessory or additional payments, which are not reflected in the entity’s capital but in its patrimony, with two main beneficial effects: (a) the increase is reflected as a reduction of taxable income by effect of the inflation adjustment regime and, (b) those additional payments are not subject to the stamp duty applicable to capital increases (10% or 1% of the increase).

The tax regime applicable to the SA will be also applicable to the SRL (with some exceptions).

Disadvantage

Transfer of ownership must be notarized and registered with the Mercantile Registry in addition to being recorded in the company’s books.

The limitation of the corporate capital to a maximum of Bs. 2,000.00 has caused this type of entity not to be frequently used.

The trapped cash issue is also applicable to the SRL.

3.4 Branch of a foreign company

In order for a foreign company to do business in Venezuela (as an alternative to incorporating a Venezuelan entity), it is required that such company is duly qualify and register. The Venezuelan Commercial Code requires that all foreign companies which are required under Art. 354 to domicile, or qualify to do business in Venezuela, shall maintain a representative, commonly called the “legal representative”, who is legally granted the fullest powers to represent the company in Venezuela.

In order for a foreign corporation to be domiciled, or qualify to do business in Venezuela, such foreign corporation must register in the Mercantile Registry of the locality where its office, place of business or agency is to be

established and publish in a local news paper, the Articles of Incorporation and those other documents essential to the organization of the company pursuant to the laws of the jurisdiction under which it was organized or created, including a certified copy of the pertinent provisions of the corporation law of the jurisdiction.

Disadvantages

- a. Requires some paperwork and translation expenses.
- b. Branches are subject to the two specific provisions mentioned below which in our view makes this investment vehicle, which was the most attractive one in the past, not as attractive.

The provisions are:

(i) Limitation of Expenses

The Seventeenth Paragraph of Article 27 of the Income Tax Law (“ITL”) sets forth that Permanent Establishments (“PE”), which concept includes branches, may deduct all expenses related to the transactions of the PE, regardless of whether the same are incurred in Venezuela or abroad.

However, the mentioned regime has a limitation represented in the non deductibility of payments made on account of royalties, professional services, technical assistance made to the home office or related entities.

The limitation mentioned above does not apply to payments made to the mentioned entities on account of reimbursable expenses, which we interpret as being made as a result of an agency relationship.

(ii) Deemed Dividend

Contrary to incorporated entities, branches will be subject to a deemed dividend, the taxable base being the difference between the net taxable income and the net financial income. The tax rate is a 34% proportional tax.

The ITL provides for an exception only in the case of reinvestments for a period of five years which system is not explained in the law.

4. Tax system

In Venezuela, we have the common taxes paid in almost every country, these being the Income Tax and the Value Added Tax, which are collected by the national fiscal entity, the *Servicio Nacional Integrado de Administración Aduanera y Tributaria* (“SENIAT”). Please find herein a table briefly describing these taxes:

Name of Tax (English)	Law	Taxable concept	Time basis for calculus	Applicable Rate
Income Tax (IT)	Ley Reforma Parcial de la Ley de Impuesto Sobre la Renta	Net income	Yearly	Progressive rate up to a maximum of 34%.
Income Tax on Dividends	Article 66 Ley Reforma Parcial de la Ley de Impuesto Sobre la Renta	Difference between the excess of the net financial income over net taxable income.	n/a	34%.
Income Tax on Technology Coming from Abroad	Articles 46 and 48 Ley Reforma Parcial de la Ley de Impuesto Sobre la Renta	Gross income from Technical Assistance or Technology Services (Patents)	n/a	10,2% Technical Assistance, 17% on Patents, and 30,6% on Trademarks.
Interests paid to Foreigners	Article 52 Ley Reforma Parcial de la Ley de Impuesto Sobre la Renta	Amount of interests	n/a	4,95% on interests paid to foreign non-domiciled financial institutions and 34% on interests paid to non-financial institutions.

Fiscal Credit on Investment	Article 56 Ley Reforma Parcial de la Ley de Impuesto Sobre la Renta	Value of Investment	5 years from the publication of the IT Law in 2007 which would expire in 2012, with a carry-over of 3 years.	10%, plus an additional 10% if said investments helps to preserve the environment.
Loss Carry-forward	Article 55 and 183 Ley Reforma Parcial de la Ley de Impuesto Sobre la Renta	Tax loss resulting from IT Return.	3 years, 1 year if they result from inflation adjustment.	n/a.
Initial Inflation Adjustment	Article 173 Ley Reforma Parcial de la Ley de Impuesto Sobre la Renta	n/a	n/a	Initial inflation adjustment: 3% calculated on value increment of the initial adjustment for inflation of the fixed assets subject to depreciation.
Regular Inflation Adjustment	Article 178 Ley Reforma Parcial de la Ley de Impuesto Sobre la Renta	n/a	n/a	Inflation adjustment: Inflation adjustment of non-monetary assets represents an increase of taxable income. Assets / Liabilities denominated in foreign currency must be adjusted at year end to the exchange rate. The result will be computed as taxable income / loss.
Value Added Tax (VAT)	Decreto con Rango, Valor y Fuerza de Ley que Establece el Impuesto al Valor Agregado	Price of item or service imported or sold in Venezuela, as indicated on invoice.	Monthly	12%. Exports sales have a rate of 0%.

Regarding exemptions and exonerations of the abovementioned taxes we inform the following:

a. Income Tax:

Tax exemptions may only be granted by law, therefore, any income tax exemption must be a general exemption benefiting all taxpayers in a similar situation and the result of a partial amendment of the existing ITL (exemptions may be granted with or without a time limit).

The ITL does not provide general tax exonerations to specific sectors or activities. Article 197 of the ITL allows the President of the Republic to grant income tax exonerations, only to specific sectors of the economy or for tax payers located in a specific area. No tax exonerations may be granted to a specific project or taxpayer.

b. Value Added Tax:

Exemptions may only be granted by law, therefore, any VAT exemption must be a general exemption benefiting taxpayers in a similar situation and the result of a partial amendment of the VAT law.

Article 65 of the VAT Law authorizes the National Executive to grant VAT exonerations for certain activities. VAT exonerations have been granted for goods and services intended for specific projects. Under this provision, the National Executive has granted exonerations for the construction of projects considered to be of national interest, (for example, subway system, bridges, etc).

Our tax system also includes several contributions to be made to public institutions such as the contribution established in the Organic Law of Drugs (1% of net income before income tax), the Organic Law of Science, Technology and Innovation (0,5% of gross income) and the Organic Law on Sports, Physical Activity and Physical Education (1% of annual net profits), the municipal taxes that may vary from one Municipality to another (approximately between 1 to 5% of gross income) and, the contributions that employers are obliged to pay by the different social security laws mentioned below.

In relation to municipal taxes, it is important to bear in mind that Municipalities are autonomous in certain taxes and, it is usual that Municipal Ordinances provide the possibility to grant tax exonerations for new companies as an incentive for those companies to establish in the Municipality. These exonerations are granted for a limited period

of time and subject to the approval of the Mayor or Municipal Chamber which have discretionary powers to approve said exonerations.

In addition to the tax exemptions and exonerations referred to above, the Law for the Promotion and Protection of Investments refers to different possibilities (i) that the State may establish more favorable conditions in order to foster investment in a given region or economic sector, and (ii) that the State may enter into stability contracts with investors in order to grant them stability of national taxes, of any regime of promotion of exports and stability of any benefit obtained through possibility (i). These guarantees can be granted for a maximum period of 10 years as from the execution of the stability contract.

5. Foreign investments

In Venezuela the current investment environment is at present somewhat hostile towards private investors as the Venezuelan Government in the recent years has systematically implemented a policy of expropriations in sectors of the economy considered to be strategic such as oil, iron, cement, construction, electricity, certain oil services contractors, etc.

Notwithstanding the foregoing, in general terms there are no limitations to foreign investments in Venezuela. There are exceptions to this general rule as there are laws that impose the obligation of a minimum participation of the State in companies performing activities in certain strategic sectors such as exploration and extraction of oil, basic and intermediate petro-chemistry, etc. Also, according to Article 26 of the Decree N° 2095, that contains the Regulations for the Treatment of Foreign Capitals and Trademarks, Patents, Licenses and Royalties, companies rendering professional services regulated by national laws, must be national companies (companies in which at least 80% of the shareholders must be Venezuelan nationals).

Regarding investment protection rights, the elements that will permit the client to protect its investment in Venezuela, are the following:

a. Constitutional provisions

The Constitution of the Bolivarian Republic of Venezuela (the “Constitution”) contains several provisions regarding equality, non-discrimination, economic freedom and property rights, which are relevant in the case of foreign investments made in Venezuela and which constitute the basis of any protection to the rights of foreign investors in Venezuela.

The Constitution establishes that under the law, all people are equal, and may not be discriminated against for any reason. Persons may dedicate themselves to the economic activity of their choice, with no other limitations than those established in the law. Property rights are guaranteed by the Constitution, and may not be limited except by reasons of public benefit or social interest. Expropriations may only be declared due to reasons of public benefit or social interest, after following the proper legal procedure and payment of a fair indemnification. However, many recent expropriations have been ordered without following this procedure and without the affected parties having received fair and timely indemnification.

There is no possibility under the Venezuelan legislation for an investor to obtain assurance that the State’s power to legislate will not in any manner produce impacts on its investment in the future (except for the stability agreement under the Law for the Promotion and Protection of Investments referred to below). However, future laws must respect and obey the general constitutional principles referred to above which impose limitations on the State to affect investments. Moreover, if a new Law contains provisions of public order that are of immediate application to an existing investment and said application affects vested rights, the investor may have an action against the Bolivarian Republic of Venezuela seeking indemnification for the damages suffered (this is a general principle, the applicability of which must be analyzed on a case-by-case basis).

b. Legal provisions

- (i) There are legal provisions in our legislation enacted with the purpose of further developing the general principles contained in the Constitution. The main provisions in this regard are contained in Law for the Promotion and Protection of Investment in force since October 22, 1999, which provides the following:
- (ii) Foreign investments in Venezuela are entitled to fair and equitable treatment, according to rules and criteria of international law and will not be subject to arbitrary or discriminatory measures. There will be no discrimination against investors based on the country of origin of their capital, although there could be a more beneficial treatment to investors of specific countries with which Venezuela has treaties.
- (iii) Foreign investments, as well as investors, will have the same rights and obligations as national investments and investors under similar circumstances, except special provisions established by law, as is the case of certain sectors of economic activity that may be reserved to the State or national investors.
- (iv) Foreign investments are not subject to prior authorization, except when it is expressly required by Law.
- (v) No confiscations other than those provided by the Constitution will be carried out, and in the case of international investments and investors, none other than those provided for under international law. Investments will not be subject to expropriations or other measures equivalent to expropriation, except for reasons of public benefit or social interest, by means of the legal procedure established for this purpose, in a way that is non-discriminatory and with sufficient indemnification. However, please be aware that in practice these rules have not been effectively applied to protect the rights of investors that have been the subject of expropriation processes.
- (vi) Foreign investors have the right to transfer abroad all payments related with the investment, such as benefits, profits, dividends, among others, after complying with Venezuelan regulations and payment of taxes. These transfers may be limited temporarily, in an equitable and non-discriminatory manner, due to an extraordinary economic or financial situation, avoiding any unnecessary harm to the investors, and such measure must be lifted once the situation which gave rise to it has been corrected. However, please be aware that due to exchange control restrictions the rights of foreign companies to transfer profits and dividends abroad have been severely affected.
- (vii) State and municipal administrations shall seek to ensure that taxes, duties and other charges do not pose a threat to the investment.
- (viii) Foreigners may be admitted temporarily to the country to perform activities in the company in which the investment has been made, or its parent company, affiliate or subsidiary, subject to the regulations and policies governing their entry and stay in the country.

In addition to the foregoing legal provisions for the protection of investments, Venezuela has entered into many Bilateral Investment Protection Treaties with other countries, which contain very similar provisions referred to Protection and Treatment of Investments, Transfer Abroad of Investment-related Payments, Expropriation and Settlement of Disputes between an Investor and the Contracting State receiving the Investment, among others. Their form and content reflect a sustained tradition based on practical criteria and therefore represent the most adequate instrument to properly protect the investment made in Venezuela.

6. Labor regulation

Currently, Labor Law in Venezuela is oriented to protecting the employee and the current legislation is very strictly enforced. In practice, Labor Courts and Authorities on Labor matters interpret the Organic Labor Law and its Regulations in a discretionary manner that tends to favor the employee, sometimes resulting in the extensive application of benefits even when they actually should not apply. These exaggerated pro-employee behaviors of Labor courts and Authorities on Labor matters has caused unions and workers to be more aggressive in their claims

and actions against employers. The construction sector has very strong unions and extensive collective bargaining agreements.

Also, social security system is a very important issue at the moment and we have several laws on the matter that impose employers with a number of economic obligations, with the purpose of helping the employee achieve better life conditions. Said laws are:

a. Organic Law of the Social Security System

The company must contribute to the Venezuelan Social Security Institute (“IVSS”) on a monthly basis with a contribution based on the salaries of its employees. The contributions shall be calculated according to the classification of risk given to a certain industry:

Minimum risk	Medium risk	Maximum risk
11 %	12%	13 %

Upon payment of the salaries to the employees, companies must withhold 4% of said salaries to be paid by the company to the IVSS, also on a monthly basis.

b. Law of the National Institute of Socialist Training and Education (“INCES”)

The INCES is entitled to receive a contribution of the employers equivalent to a 2% of the normal salaries paid to the personnel who render services in the company, to be done every trimester and, a 1/2% of the annual profit-sharing; this amount shall be withheld by the employers and shall be paid to the INCES.

The company shall be obliged to make the above-mentioned contributions only when it has five or more workers rendering services in its premises. When the company has more than fifteen employees, it has the obligation to employ a number of apprentices. The number of apprentices that the company must hire will be determined by the regulation to the Law, which has not been issued yet. Meanwhile, the number of apprentices hired should not be less than 3%, or more than 5% of the total number of employees.

c. Law of Employment Contribution Regime

The Law provides for a monthly payment to the IVSS. Such payment is to be done as follows:

- (i) 80% of the equivalent to 2.50% of the normal salary of the employee must be paid by the employer.
- (ii) The employee must pay 20% of the equivalent to 2.50% of his normal salary. Said amount must be withheld by the employer and then paid to the IVSS or System.

d. Law on Dwelling and Habitat Regime

The total contribution to be made to this system is of 3% of the total monthly salary of each employee. Every worker must have a savings account to deposit the contributions made by him and his employer. The company has the following obligations:

- (i) To withhold 1/3 from the 3% of the integral monthly salaries of each of its workers.
- (ii) To make a contribution equal to 2/3 of the 3% of each of the integral monthly salaries of each of its workers.

e. Law on Employee Feeding

The company must assist its employees who earn up to the equivalent to 3 minimum salaries with their alimentary requirements, either by providing the employee with meals through the installation of canteens or by providing them with food coupons, which may not be less than 0.25 tax units nor have to exceed 0.50 tax units per day. For your reference, please be informed that one tax unit is currently equal to Bs. 76.00.

In addition to the previously mentioned laws, there is also the Organic Law on Prevention, Work Conditions and Environment (LOPCYMAT), which regulates the aspects relating to health and safety at work and is one of the most important laws regarding labor matters, in view of the numerous obligations it imposes to the employer and, because of the importance it grants to the participation of the employees in keeping the health and safety conditions adequate.

The Labor Preventive Health and Safety National Institute (INPSASEL) has been carrying out numerous random inspections to the facilities of many companies and in several cases imposing criminal and monetary sanctions to the company and its directors, for not complying with adequate safety and labor conditions in their facilities, and even for not complying with minor formalities unclearly established in the LOPCYMAT.

Another important labor related obligation that should be addressed is that every company must obtain a Labor Clearance. This is a document issued by the Labor Inspector asserting that a company complies with all labor regulations. According to Decree N° 4.248, all companies must have the Labor Clearance issued in order to contract with any Government Agencies, obtain credits from the Public Financing System and, being granted USD from exchange control authorities, among other things involving negotiations with the government.

It is also important to mention that for many years there has been a firing freeze, which covers all workers of the public and private sector governed by the Organic Labor Law, and that has been once again extended until December 31, 2011.

The Decree shall not be applicable to workers of direction; workers who have rendered services to their employer for a period shorter than three (3) months; workers of trust; seasonal, temporary, and occasional workers; workers who on the date of the Decree earn a monthly basic salary exceeding three (3) monthly minimum salaries, and the officers of the public sector who will continue to be covered by the firing freeze prescribed in the legal provisions governing the same.