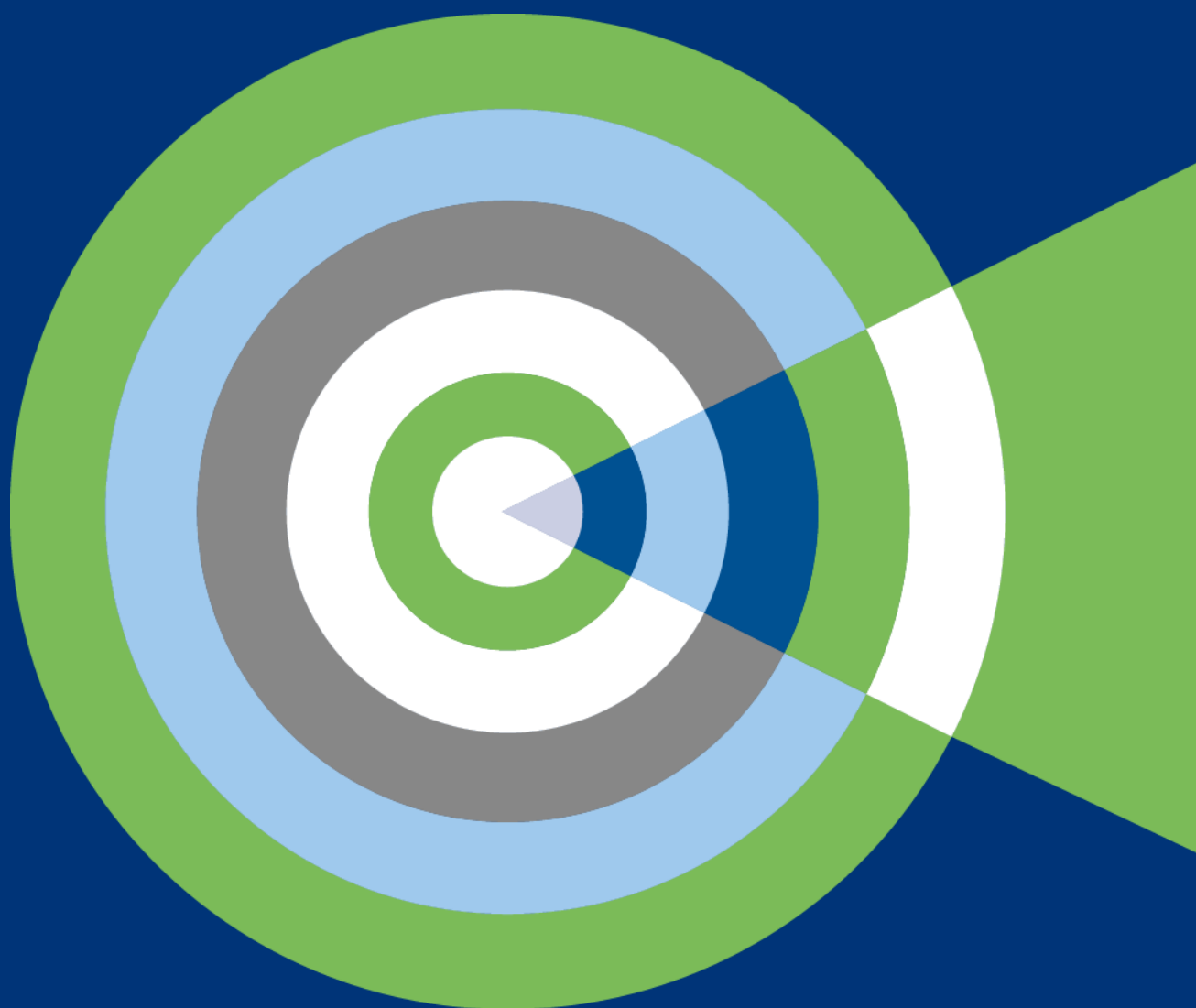


# DOING BUSINESS

IN VENEZUELA



The network  
for doing  
business

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# 1 – INTRODUCTION

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UHY is an international organisation providing accountancy, business management and consultancy services through financial business centres in around 90 countries throughout the world.

Business partners work together through the network to conduct transnational operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering business operations in Venezuela has been provided by the offices of UHY representatives:

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Information in the following pages has been updated so that they are effective at the date shown, but inevitably they are both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions. This publication is current at February 2018.

We look forward to helping you do business in Venezuela.

## 2 – BUSINESS ENVIRONMENT

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### BACKGROUND

The official name of the country is the Bolivarian Republic of Venezuela (República Bolivariana de Venezuela).

Venezuela is a nation which offers many opportunities for foreign investors.

### GEOGRAPHY

Geographically, Venezuela is located in the northern part of South America, with a total land and freshwater area of approximately 975,000 square kilometres; 2,800 km coastline to the north; large tracts of the Amazon to the South; and a mountainous landscape to the west.

Venezuela's borders are defined by the Caribbean Sea and the Atlantic Ocean along the northern boundaries, Brazil to the south, Colombia to the West and Guyana to the east.

Both the land and climate in Venezuela are remarkably diverse; consequently, each region offers different resources and different opportunities to investors. Average temperatures in the country are warm all year; temperatures in Caracas are around 28°C (82°F) throughout the year.

Venezuela is rich in natural resources such as oil, aluminium, iron, copper, silver, gold, and timber; and more recently coltan (blue gold) mines have been discovered; water resources are readily available. Petroleum dominates the Venezuelan economy. It accounts for about most of the nation's GDP, over 90% of its exports; and more than half of government operating revenues.

### POPULATION

The estimated population of Venezuela in 2010<sup>1</sup> was 29,043,555 million people.

The territory is divided into 23 states, a Metropolitan District (which includes the country's capital, Caracas) and federal dependencies (including islands, islets and keys, mostly uninhabited). Close to 85% of the population live in urban areas in the northern part of the country. Caracas (in the north) has approximately 3 million inhabitants. Other key cities are Maracaibo, Valencia, Barquisimeto, Maracay, Puerto La Cruz, Puerto Ordaz and Maturín.

Most Venezuelans are descendants of Spaniards, native Indians and Africans from the colonial period. During the 20<sup>th</sup> century, these groups were joined by immigrants of Italian, Portuguese, German, Croatian, Syrian, and Lebanese, as well as many Latin Americans (mostly Colombians, Ecuadorians and Peruvians).

Venezuelans are well-known for their easy-going nature and fun-loving spirit; therefore no cultural influences or prohibitions affect the way business is conducted. The official language is Spanish, although English is widely spoken in the tourism and business environments.

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<sup>1</sup> National Institute of Statistics ('Instituto Nacional de Estadísticas') - <http://www.ine.gov.ve/poblacion/distribucion.asp>

## THE POLITICAL SYSTEM

Venezuela is a federal republic, with a representative and democratic system. Since 1999, the system has been divided into five branches (Executive, Legislative, Judiciary, Moral and Electoral powers<sup>2</sup>).

### EXECUTIVE POWER

The Venezuelan president is elected for a six year period and may be re-elected indefinitely. The current president is Nicolas Maduro. The next election will be in April 2018.

### LEGISLATIVE POWER

The Legislative power is represented by a National Assembly (Asamblea Nacional) composed of one chamber with 167 Representatives, who are elected for a five year period. The next election will take place in 2020.

### JUDICIARY POWER

The judiciary is represented by the Supreme Justice Tribunal (Tribunal Supremo de Justicia), the Superior Courts (Collegial and Unitary), the First Instance Courts and the District Courts. The Supreme Justice Tribunal has 32 magistrates<sup>3</sup> who perform their duties for a period of 12 years<sup>4</sup> and may be discharged only at the end of their duties or by a resolution of the Moral Council reaffirmed by the National Assembly.

The president of the Supreme Justice Tribunal is elected every year and can be re-elected. The Supreme Justice Tribunal (at the apex of the court system) appoints all judges and magistrates in consultation with civil society groups.

### CITIZENS' POWER

The power of citizens is represented by the Moral Republican Council, composed of three entities: the General Attorney, the Ombudsman (or People's Defender) and the General Controller<sup>5</sup>.

### ELECTORAL POWER

This is represented by the National Electoral Council<sup>6</sup> (Concejo Nacional Electoral) and five members are chosen by the National Assembly's majority vote for a seven year period<sup>7</sup>.

## THE FEDERAL ADMINISTRATION

President

Vice-president

The Ministry of People's Power:

- Office of the presidency
- Agriculture and land
- Basic industry and mining

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<sup>2</sup> Article 136 of the Bolivarian Republic of Venezuela's Constitution published in the Official Gazette N° 5.453 (Extraordinary) 24 March 2000.

<sup>3</sup> [www.tsj.gov.ve](http://www.tsj.gov.ve)

<sup>4</sup> Article 264 of the Constitution

<sup>5</sup> Article 273 of the Constitution

<sup>6</sup> Article 292 of the Constitution

<sup>7</sup> Article 296 of the Constitution

- Communications and information
- Culture
- Economy
- Defence
- Education
- Energy and oil
- Environment
- Energy and electricity
- Foreign affairs
- Food
- Health
- Higher education
- Housing and habitat
- Interior and justice
- Labour and social security
- Light industry and trade
- Native people
- Participation and social protection
- Planning and development
- Public banking
- Science and technology
- Sports
- Tourism
- Transport and communications
- Women's affairs
- Central bank governor

## ECONOMY

According to the Central Intelligence Agency<sup>8</sup>, Venezuela remains highly dependent on oil revenues, which account for almost all export earnings and nearly half of the government's revenue. In 2017, GDP contracted 12%, inflation exceeded 650% (one of the highest rates of inflation in the world), people faced widespread shortages of consumer goods, the exchange rate tumbled, and central bank international reserves dwindled. On the other hand, Venezuela managed to pay down its external debt and narrow its current account deficit. Domestic production and industry continues to severely underperform and the Venezuelan government continues to rely on imports to meet its basic food and consumer goods needs.

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.

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<sup>8</sup> [www.cia.gov/library/publications/the-world-factbook/geos/ve.html](http://www.cia.gov/library/publications/the-world-factbook/geos/ve.html)

The Venezuelan Government has maintained strict currency controls since 2003. The Venezuelan official currency exchange mechanisms used 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 10 bolivars per dollar; while the second rate was based on a managed float mechanism.

The Gross Domestic Product Gross was USD 215.3 billion in 2017 (12% less than in 2016); placing Venezuela in the position number 222 out of the 223 countries of the world. The composition of the GDP by sector was: agriculture: 3.9%; industry: 32.9%; and services: 63.2%.

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

For agricultural products, the country relies upon imports from many countries including the USA as the largest trading partner for agricultural commodities. Other key trading partners of Venezuela are Brazil, China, Colombia and Mexico.

Imports partners: US 22.1%, China 13.3%, Brazil 7.4%, Colombia 4.2%.

Reserves of foreign exchange and gold (2017 est.):  
\$9.5 billion (13% down from previous year)

Both private and public-owned companies engage in economic activities, although the government's participation in all sectors of economy is growing. From the point of view of GDP's non-oil components<sup>9</sup>, the sectors of the economy show these changes between 2014 and 2015:

Mining	-30%
Manufacturing	-30%
Electricity and water	-26%
Construction	-44%
Trade and repair services	-36%
Transport and storage	-33%
Communications	-22%
Financial institutions and insurance	-33%
Real estate, business and rental services	-28%
Community, soc. and personal services and not-for-profit private services	-31%
General Government services	-30%

(The Central Bank of Venezuela has not published these figures for 2016 and 2017)

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<sup>9</sup> [www.bcv.org.ve](http://www.bcv.org.ve)

## 3 – FOREIGN INVESTMENT

### INTRODUCTION

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 and non-transparent 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 and 180.9 percent inflation, and widespread shortages of consumer goods. In the absence of official GDP or inflation figures for 2016, the International Monetary Fund (IMF) projected that the economy would shrink another 10 percent, with inflation reaching 475 percent. The IMF estimates 2017 inflation will reach 1,660 percent and the economy will contract a further 4.5 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.<sup>10</sup>

### TRADE AGREEMENTS

- a) World Trade Organization – member since 1 January 1995
- b) Latin-American Group of Integration (ALADI) – member since 12 August 1980
- c) Association of Caribbean States (CARICOM) – subscribed on 13 October 1992 and published 30 December 30 1992 by the Official Gazette, No. 4.508
- d) Southern Common Market (MERCOSUR) – trading member since 31 July 2012
- e) Alianza Bolivariana para los Pueblos de Nuestra América (ALBA) – ALBA was created in Habana (Cuba) on 14 December 2004 by the agreement of Venezuela and Cuba, with the personal involvement of the presidents of both countries, Venezuelan President Hugo Chávez and the then President of Cuba Fidel Castro. Bolivia joined the agreement on 29 April 2006. Nicaragua joined in 2007 and Honduras in 2008. In addition, the small Caribbean States of Antigua and Barbuda, Dominica and Saint Vincent and the Grenadines, belonging to CARICOM, became members in 2008. Ecuador was incorporated in June 2009.

### INVESTMENT LEGISLATION

According to the Superintendent of Foreign Investments (SIEX), foreign investment and effective transfer of technology are Venezuelan goals in order to achieve a competitive and free market economy.

In view of these objectives, Venezuela has a juridical regime based on the principle stated in Article 2 of Decision 291 of the Commission of the Cartagena Agreement, which establishes the following: 'Foreign investors shall have the same rights and obligations as national investors'. The Andean supranational rules, contained in said Decision 291, have been regulated in Venezuela by Presidential Decree Nº 2095 of 13 February 1992<sup>11</sup>.

<sup>10</sup> <https://www.state.gov/e/eb/rls/othr/ics/investmentclimatestatements/index.htm#wrapper>

<sup>11</sup> The Superintendence of Foreign Investments, 'Legal Regime'



The fundamental aspects of the foresaid Decree N° 2095 are the following:

- No authorisation is required to make an investment in Venezuela. The only requirement is to register the investment with the Competent National Authority right after the company is incorporated in the Mercantile Registry. The only requirement for foreign investors acquiring shares on the national stock market is to register the balance of investments they hold at the end of the calendar year.
- No authorisation is required to remit all or part of the benefits, gains or profits. Likewise, an unlimited repatriation of capital is allowed<sup>12</sup>
- No authorisation is required for the acquisition of shares by foreign investors in national, mixed or foreign companies. Likewise, the participation of foreign investors in the public offer of securities is freely permitted, with no regulation other than those contained in the Capital Markets Law and its respective regulations, which has the same rules for national investors.
- No authorisation is required to execute contracts of technical assistance and trademark and patent licences. The only requirement is the subsequent registration and qualification by SIEX.
- There is no regulation concerning execution and registration of internal or external loan agreements. Therefore, both foreign and national investors have free access to international and national credit.

There is also a 'Registration of Investments made with the Proceeds of the Sale of Securities Denominated in Foreign Currencies issued by the Republic', Resolution N° 2.912 of the Ministry of Finance.

#### FOREIGN INVESTMENT RESTRAINTS<sup>13</sup>

Activities reserved to the State are:

- a) Arms and explosives – according to article No. 5 of the Arms and Explosives Law, only the National Government is entitled to establish arms and ammunition factories in accordance with rules previously established by it and there are no concessions.
- b) Oil and its derived products<sup>14</sup> – investment is restrained in all activities related to the exploitation of oil fields, asphalt and hydrocarbons within the Venezuelan territory, as well as manufacture and refinement, transportation, storage and national or international commercialisation of exploited and refined substances. Investors have two ways to invest in the industry, either by strategic associations with Petróleos de Venezuela S.A. (PDVSA)<sup>15</sup> in big projects, or by investing in marginal fields.
- c) Mining – according to the Mining Law<sup>16</sup>, article 2, all mines or mineral fields within the country belong to the Republic. The right to exploit minerals can only be acquired through concessions granted by the executive. No differentiation is made between a national or international investor, as long as there is no involvement of a foreign state or government in the investment.
- d) Postal and telegraphic services – mail is considered to be a public service, but a concession is possible with the previous approval of the Ministry of Infrastructure.

<sup>12</sup> Controls apply as a result of the Exchange Control regime

<sup>13</sup> <https://www.export.gov/article?id=Venezuela-Openness-to-and-Restrictions-upon-Foreign-Investment>

<sup>14</sup> Organic law that reserves to the State, the industry and Commerce of the hydrocarbons; Law that reserves to the State the natural Gas industry; and, Law that reserves to the State the operation of the internal market of hydrocarbons derivatives.

<sup>15</sup> Petróleos de Venezuela is the national oil company

<sup>16</sup> Law of mines.

- e) Railroad transportation services – railroads should be built by the State or by private companies with concessions granted to private persons or domiciled companies, which are not dependent by any means on foreign governments or on any company in which they have a certain interest or are part of, by themselves or through third parties.
- f) Port operation and navigation routes – the executive is entitled to grant concessions for certain special operations and port administration of public and private ports.
- g) Airport control services.
- h) Navigation assistance services.

Activities where foreign Investments are excluded, restrained or limited:

- a) Radio, television and broadcasting services – only Venezuelan citizens or Venezuelan companies, in which at least 80% of the shares are owned by Venezuelan citizens.
- b) Custom services – custom operations must be completed through a custom agent. To act as a Custom Agent, the following two criteria are required:
  - i) to be a Venezuelan citizen or a Venezuelan Company (as defined by the Cartagena Agreement)
  - ii) to be established in the same place where the customs agency will run its operations
- c) Dairy products – all activities related to the dehydration of milk must be developed by Venezuelan citizens or Venezuelan companies and foreign citizens must not own more than 40% of those company's shares.
- d) Maritime transport – all shipping agents must, in order to perform any activities with the maritime authorities, be Venezuelans or in the case of companies, at least 80% of their shares must be owned by a Venezuelan citizens or a Venezuelan company.
- e) Aerial transport – only Venezuelans (citizens or companies) can sign or matriculate airplanes destined to offer public or private aerial services.
- f) Special aircraft services – according to Venezuelan law, operations related to specialised works or services for airplanes, are restricted by the meanings contained in the Permit granted by the Ministry of Infrastructure. It is also necessary that a Venezuelan citizen or company must own at least 51% of the company providing such services (or work).
- g) Summer or recreational camps – in order to be able to administer or exploit recreational camps, the owner must be either Venezuelan or a foreign citizen living in Venezuela for at least five years.
- h) Security and Defence Law – unless granted a special written permission by the Ministry of Defence, no foreign citizen is allowed to acquire or possess by himself or through third parties the ownership or rights over real estate within the borders' security zone, nor adjacent to military zones or near basic industries' zones.
- i) Bus services – concessions to private companies are granted solely by the National Executive.
- J) Professional services – investing in companies of professional services is regulated by national laws; it is an exclusive right of Venezuelan companies.

### DOING BUSINESS STRUCTURES

There are different structures for companies to start business in Venezuela, such as government participation, joint ventures, partnerships and limited liability companies, or they can be subsidiaries, branches or representative offices, trust, etc. Each of these structures needs different authorisation from the government or its entities to do economic activities in Venezuela.

As a general rule, all profits derived from stock sales of companies incorporated in Venezuela are subject to taxation. Transfers of stocks made through the stock exchange market are subject to a proportional tax of 1% of the price withheld by the securities exchange institution. The acquisition of shares is subject to a withholding tax of 5% of the gross selling price when the company is not a public company. The Tax shall be withheld by the purchaser and paid to the national treasury.

The incorporation of a new company, or the registration of subsidiaries and branches (counting from the moment all documents are delivered and the capital is transferred to a Venezuelan bank account) can take up to four or five months. The registry of a Shareholder`s Meeting Minutes usually takes 12 business days. There is a registration fee for incorporation of a new company equivalent to 1% of the capital stock or the capital allocated to the branch, plus administrative fees payable to the Registry Office.

In general, there is no minimum or maximum share capital required for stock corporations. The shareholders must subscribe the total capital stock and pay at least 20% of the subscribed shares. Investments may be made in cash or by capitalisation of goods. For certain businesses such as in the banking sector, particular requirements are applicable for the minimum capital.

It is important to point out that the Registry Office may request a copy of the passport and visa (Labour or Business) of the shareholders and often request the same documents for at least one of any foreigners appointed as managers or directors.

Regarding branches and representative offices, the tax obligations are responsibility of the parent company; whereas, subsidiaries are responsible of their own tax obligations.

#### REQUIREMENTS TO ESTABLISH A BUSINESS

- Alien Business Law
  - A company incorporated in Venezuela is subject to the Venezuelan law. The incorporation, administration and operation of businesses in the country must follow its rules and cannot be subject to foreign business laws.
- Antitrust Laws
  - Trusts are regulated under the provisions known as the Antitrust Act, which establishes the general framework for each matter and it is applicable to public or private corporations engaged in economic activities.
- Environmental Regulations
  - All economic activities are subject to environmental regulation. There might be some added costs involved for companies developing certain activities.
- Government approvals
  - There are no government approvals required for the incorporation of companies in Venezuela.
- Insurance
  - Except for companies developing activities in certain economic sectors, there is no need for companies to carry insurance; but usually all companies have insurance.
- Licence and Permits
  - There are several permits, licenses and authorisations required, depending on the business activity. Applications will depend on the rules established by the relevant authority for a particular activity, such as licences required for pharmaceutical laboratories.

### OPERATION OF THE BUSINESS

There are a few steps to be taken which generally require the assistance of experienced local professionals:

1. Advertising controls – there are controls on false or misleading advertising
2. Regulated prices – selling some goods at prices higher than its regulated price is subject to fines and other sanctions.
3. Legal assistance – this is recommended to avoid unnecessary risks. Also, all documents submitted to the Registry Offices must be signed by a local lawyer (in some states, by a state lawyer).
4. Bookkeeping – accounting books must be kept in Spanish following the IFRS rules.
5. Business ethics – some activities, such as pharmaceutical laboratories, accountants, hospital and clinics, are subject to have a code of business ethics.
6. Construction activity – several permits are required for building construction. These permits are granted by municipal authorities following their own rules regarding requirements and procedures. The time required and fees will vary from one municipality to another.
7. Product registration – some products such as food and drugs must be registered before the respective authority. Time and fees will vary from one authority to another.
8. Sale of certain goods – some restrictions apply with regards to the manner, time and place of the sale of some specific goods (e.g. the sale of alcohol at certain times or in certain places).

### TERMINATION OF BUSINESS

1. Fees corresponding to local legal counsel, registration of corporate documents before the Registry Office, Statutory Auditor and Liquidator will vary, depending on the company. The updating, filing and registration of each Shareholders' Meeting Minutes can take from ten to 20 business days. The termination of a duly updated company will take at least a couple of months.
2. The termination of a branch is a simple decision from the parent company and (if it is duly registered) this will be considered by authorities as a termination.
3. All creditors, employees and taxes due must be paid before the final termination of the company. The Liquidator is the person in charge of those payments.
4. The fiscal authorities must be notified of any termination or liquidation.

## 4 – SETTING UP A BUSINESS

### CUSTOMS OFFICES

According to the Customs Law<sup>17</sup>, Venezuelan customs administration is divided into two levels:

- a) Local Offices (Operative Level) – to whom the Custom Duties Division, the Custom Operations Division, the Values Division and the Supervising and Control Division are dependents<sup>18</sup>
- b) The Central Administration (Policy Level).

Venezuela's customs system follows the World Customs Organization (WCO) directions, in order to comply with the required uniformity on procedures and treatment of custom operations.

### CUSTOMS DUTIES

Products in Venezuela are classified according to the Harmonised System (HS)<sup>19</sup>; which uses an eight digit code, adapted specially for the Andean Community countries using a 10 digit code in accordance with Decision 381 of the Andean Community, in order to specify a particular national product.

The 'ad valorem' duties applied to the CIF (Cost, Insurance and Freight) value are: 0%, 3%, 5%, 10%, 15%, 20% and 35%.

### VALUE ADDED TAX

As established by the Value Added Tax Law, in its article 1, the importing of goods must be taxed as a mandatory requirement for the nationalisation of merchandise. Since 2009 the VAT rate is 12%<sup>20</sup>. An additional rate of 15% is charged for the sale of luxury goods:

- Motor vehicles over \$40.000
- Motor cycles over \$20.000
- Civil aircrafts
- Ships
- Slot machines
- Jewellery and watches
- Guns and accessories
- Works of art
- Garments in leather
- Animals for recreational or sporting purposes
- Caviar and its substitutes

Exporters have the right to recover the VAT paid on the acquisition of goods and services in the scope of their export activities. This tax recovery is subject to the Value Added Tax Law and its regulations. Entities developing industrial projects have the right to defer the use of value added tax credits until the start of operations.

<sup>17</sup> Published by the Official Gazette No. 5,353, Extraordinary 17 June 1999

<sup>18</sup> <http://www.gobiernoenlinea.ve/home/homeG.dot>

<sup>19</sup> The Harmonized Commodity Description and Coding System, <http://www.wcoomd.org/ie/En/en.html>

<sup>20</sup> National Budget Law, published by the Official Gazette No. 39147, 26 March 1999

Customs Fee: a 2% charge on the value of the merchandise plus the value added tax is required for customs services.

#### MAIN PORTS<sup>21</sup>

- a) Public – there are eight main public ports: Puerto Sucre, Puerto Carúpano, Puerto de Guanta, Puerto El Guamache, Puerto Guaranao, Puerto La Guaira, Puerto de Maracaibo and Puerto Cabello.
- b) Private – these ports are generally used in specific industries such as oil, mining, aluminium and chemical:
- in the oil industry: Amuay, Bachaquero, Bajo Grande, Borburata, Cabimas, Caripito, Catia La Mar, El Chauro, El Palito, Guaraguao, La Salina, Puerto Miranda and Punta Cardón
  - in the mining and Iron Industry: Puerto Ordaz, Palúa and Matanzas
  - in the aluminium industry: Alcasa, Venalum and Interalumina.

#### MAIN AIRPORTS

- a) Public – there are 11 international and 41 national airports. The main ones are:
- Simón Bolívar International Airport in La Guaira, close to Caracas.
  - General José Antonio Anzoátegui Airport (eastern Venezuela).
  - La Chinita International Airport in Maracaibo (west of Venezuela).
  - There is, at least, one national airport on each state.
- b) Private – these are mainly used by government authorities.

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<sup>21</sup> <http://www.consulvenbucaramanga.com/inversiones.htm>

## 5 – LABOUR

### LABOUR RELATIONS

Labour relations in Venezuela are governed by the Organic Labour Act (OLA), published by the Official Gazette No 6.076 on May 7, 2012.

Under the OLA, Venezuelan workers are granted numerous benefits and protections, including maximum working weeks, minimum wage requirements and the right to unionise.

Labour regulations are part of the public order and may not be waived by employees. They are applicable to all individuals who are employed to provide services in Venezuela or are employed in Venezuela to provide services abroad, regardless of their nationality.

Venezuela's labour regulations follow the rules and directives of the International Labour Organization (ILO). Moreover, the Constitution of the Bolivarian Republic of Venezuela gives constitutional rank to principles established by the ILO.

The Ministry of People's Power for the Protection of the Social Process of Labour is in charge of the compliance to the labour law and its regulations, while the Labour Inspector (Inspector del Trabajo) has supervisory, compliance and conciliatory functions.

### MAXIMUM WORKING WEEK AND MINIMUM SALARY

The Labour Law establishes the maximum working hours as follows:

- a) day shift (between 5:00 am and 7:00 pm): 40 hours per week, 8 hours per day.
- b) night shift (more than 4 hours starting at 7:00 pm): 35 hours per week, 7 hours per day.
- c) mixed shift: 37.5 hours, 7.5 hours per day.

In these cases, working time may not exceed eleven (11) hours per day; and within eight (8) weeks shall not exceed the average of forty (40) hours per week. The night shift must be rewarded with a bonus of at least 30% over the employee's regular hourly wage.

Daily and weekly working time limits do not apply to the following cases:

- Top management
- Employees of surveillance
- Schedules established by collective agreements

Overtime and non-working days must be rewarded with a minimum of 50% over the employee's regular hourly wage. Overtime must not exceed 2 hours per day, 10 hours per week or 100 hours per year. Overtime, must be authorized by the Labour Inspector.

The minimum monthly wage beginning March 2018 is VEF 392,546 plus a food subsidy of VEF 915,000 (USD 37.23)<sup>22</sup> for urban private and public workers<sup>23</sup>. This limit might be modified by the Government when a disproportionate increase occurs in living expenses in relation to wages.

<sup>22</sup> Using the existing DICOM exchange rate for February 2018 of 43,260.34 VEF/Euro

<sup>23</sup> Decree of the Presidency. Published by the Official Gazette No. 42,351, 1 March 2018

## HOLIDAYS

- January 1<sup>st</sup>
- Monday and Tuesday of Carnival
- Thursday and Friday of Easter
- April 19<sup>th</sup>
- May 1<sup>th</sup>
- June 24<sup>th</sup>
- July 5<sup>th</sup>
- July 24<sup>th</sup>
- October 12<sup>th</sup>
- December 24<sup>th</sup>, 25<sup>th</sup> and 31<sup>st</sup>
- Others declared as holidays by the States or by Municipalities, up to three (3) per year.

## OTHER LABOUR BENEFITS

There are certain non-salary benefits such as cafeteria services, food allowances and mandatory childcare services, as well as under certain labour contracts, reimbursement for medical, pharmaceutical and dentist expenses, funeral expenses, scholarships and payment for training or specialisation courses, among others. These benefits can be considered part of the salary if collective or individual labour agreements expressly state so.

**Birth leave:** Both parents are protected against termination for a period of two years after the birth of a child. Parents of adopted children, up to three years old, are also protected against termination for the next two years. The pre-maternity and post-maternity leave is of twenty six (26) weeks.

**Sick leave:** Sick leaves are justified absences as long as they are certified by a physician. Absences for more than three (3) consecutive days without certification can be interpreted as truancy; and therefore, used as reasons for dismissal.

## BENEFITS AND OTHER EMPLOYER OBLIGATIONS

### VACATIONS

All employees are entitled by law to 15 working days of vacation after one year of uninterrupted work. They are also entitled to enjoy one additional day of vacation per year, up to a maximum of 15 additional working days.

It is also provided by law that, in addition to the regular monthly wage, all employees are entitled to a payment of a seven-day vacation bonus, which increases one day every year of employment up to a maximum of 30 days.

### MANDATORY PROFIT-SHARING

Employers are required to share or distribute with their employees at least 15% of their annual net profits. However, this profit-sharing has a limit: the employee's share must not be less than the equivalent of 30 days normal salary and should not exceed the wages of four months. This bonus is mandatory because the employers must pay it even if they did not have profits. The mandatory profit-sharing is tax deductible.

### SEVERANCE PAYMENTS

- i) **Advanced notice indemnity.** This indemnity must be paid when the employee is fired without a cause or due to economic or technological reasons. Employees are entitled to this advance notice indemnity as follows:



- one week of salary after one month
- 15 days of salary after six months
- one month of salary after one year
- two months of salary after five years
- three months of salary after ten years

ii) Seniority indemnity. After three months of continuous service, the employees are entitled to a seniority indemnity equivalent to five days of salary for each month of service. After the first year of service (or fraction of a year greater than six months), the employees are entitled to an additional two days of salary per year of service, up to a maximum of 30 days of salary.

Seniority indemnities shall be either deposited monthly in individual trust accounts or accrued in the employer's accounting records as long as specified in writing by each employee. Deposited or credited amounts will bear monthly interest either at the trust yield or at the average rate determined by the Central Bank if accrued in the company's account. This indemnity must be paid upon termination of the employment relationship, and the accrued interest must be paid annually to the employee, unless he indicates otherwise.

iii) Unjustified firing indemnity. When an employee has been dismissed without justified reasons, he/she may apply, within the next ten (10) working days, for reinstatement to his/her job. Top management is not covered by this benefit. If the employee does not want to be reinstated, he/she shall be indemnified. This payment applies also when an employer wishes to fire an employee without complying with the advance notice.

Depending on the length of the labour relationship, this indemnity will be of:

- 10 days of salary after three months but less than six months; or
- 30 days of salary, up to a maximum of 150 days, after each year or fraction greater than six months.

#### STABILITY GUARANTIES

Employees hired under an indefinite term contract will have stability beginning after the first month of employment. Termination without cause will only apply if an employee agrees to receive an indemnity equivalent to the amount of the severance payment.

Labor continuity: Fixed term contracts may be extended only once. In case of two (02) extensions, the contract is deemed indefinitely. Also, labor continuity occurs when a new contract is signed within three (3) months upon expiration of the previous one. The maximum term for fixed term contracts is one year.

Labor immobility: Workers may not be dismissed, transferred, or somehow "diminished" without a cause which must be previously certified by the labor inspector.

#### SOCIAL SECURITY

This public mandatory program provides certain benefits to all Venezuelans: medical care, compensations for marriage, retirement, unemployment, dependents pension, temporary or permanent disabilities (either partial or total), recreation, housing subsidies, among others.

It also establishes responsibilities to the employers, such as the obligation to register in the Social Security Institute (IVSS) and, subsequently, to register new employees within three working days following the beginning of the labour relationship. Employers must provide notification of any employee's termination or resignation; as well as any change in the employee's salary; even notify death of any employee.

Finally, the Social Security requires monthly contributions as follows:

- i) Employer's contribution<sup>24</sup>: 11%, 12% or 13% of the monthly salary depending on the risks inherent in the activity.
- ii) Employee's contribution - 4% of the monthly salary.

**TABLE 3**  
*Contributions Chart*

CONTRIBUTION	EMPLOYER	EMPLOYEE	BASE
<b>SOCIAL SECURITY</b>			
High risk	13%	4%	monthly salary
Medium risk	12%	4%	monthly salary
Low risk	11%	4%	monthly salary
<b>UNEMPLOYMENT INSURANCE</b>			
	2%	0.5%	monthly salary
<b>EDUCATIONAL COOPERATION</b>			
	2% (3)	0%	Total salary (4)
	0%	0.5%	Profit sharing
<b>HOUSING</b>			
	2%	1%	Paid by payroll

(1) 5 minimum wages

(2) 10 minimum wages

Monthly minimum wage<sup>25</sup> since March 2018 is VEF 392,546 plus a food subsidy of VEF 915,000 (USD 37.23)

(3) On a quarterly basis

(4) Includes overtime, commissions, bonuses, etc.

<sup>24</sup> The rate varies with the risk, being 13% for the maximum risk activity, 12% for medium risk and 11% for minimum risk

<sup>25</sup> Published by the Official Gazette 42,351, 1 March 2018

## WORK VISA REQUESTS<sup>26</sup>

Foreign nationals entering Venezuela for business matters require a transient visa issued by a Venezuelan consulate overseas. They must have a work permit and a work visa. Labour permits are granted by the Ministry of the Popular Power for Labour and Social Security. The process for obtaining a labour permit can take between three to four months. There are no fees involved in the process with the competent authority. The common practice of entering Venezuela as a tourist while on short business assignments is illegal and could result in adverse tax consequences and penalties, among other things.

Visas include:

- i) Tourist visa
- ii) Business visitor
- iii) Investor visitor
- iv) Entrepreneur/ industrialist visitor
- v) Venezuelan family relation visitor
- vi) Visitor with fixed income (produced outside Venezuela)
- vii) Student visitor
- viii) Religious visitor
- ix) Family member visitor
- x) Returning resident
- xi) Work permit
- xii) Transit visa (transit traveller)

## EMPLOYMENT OF EXPATRIATES

All of the benefits mentioned above apply to every employee in Venezuela, regardless of their nationality, but according to the Organic Labour Act, at least 90% of employees in a company operating in Venezuela must be Venezuelan nationals.

## SAFETY STANDARDS

All companies must follow the Organic Law for the Prevention, Conditions and Labour Environment (known as LOPCYMAT). This law establishes mandatory safety codes and obliges employers to train employees with respect to occupational safety and health.

## UNIONS

Unions are recognised in Venezuela. Depending on the business, there may or may not be unions. Industries such as oil, construction, pharmaceutical and manufacturing, among others, have established unions. However, there is no obligation on the part of the employer to organise unions. Depending on the industry, there may be mandatory collective bargaining agreements.

## DRIVING LICENCE

The driving licence is issued by the National Institute of Transit and Terrestrial Transport (INTTT)<sup>27</sup> through the local Transit Inspector's Office, by taking the written and practical examination.

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<sup>26</sup> [www.embavenez-us.org](http://www.embavenez-us.org)

<sup>27</sup> Instituto Nacional de Tránsito y Transporte Terrestre

## IMMIGRATION REQUIREMENTS

- General Immigration Controls
  - There are no immigration quotas
  - In some cases vaccinations are required
  - Medical certificates are required
  - Resident permits are not required
- Visas
  - A Business Visa is granted to merchants, top management, industry or corporate representatives, micro-entrepreneurs and non-migrants, who wish to enter the country in order to carry out activities and/or commercial transactions, mercantile, financial or other lucrative activities related with business. It is obtained directly by the person before the Venezuelan Consulate in his country of origin or residence. It is granted for one year for multiple entries. The holder of this visa is not entitled to work for any local company.  
Documents required:
    - Description of the purpose of the trip
    - Contact information of the persons and companies being visited in the country
    - Registry documents of the company in Venezuela
    - Invitation letter from a company or a business or trade association
    - Any other document that the Consulate might consider necessary
  - A Labour Visa is granted to anyone who wants to work in Venezuela and be hired by a company registered in Venezuela. It is advisable to obtain the visa before the employee enters Venezuela. If the employee needs to come to the country before obtaining the visa, the employee shall enter Venezuela with the Business Visa. Once the Labour Visa is authorised, the employee shall obtain it at the Venezuelan Consulate in his country of origin or residence. The procedure to obtain authorisation to enter the country and the labour permission of the employee may take from three to four months. It is granted for one year and the holder can bring his family to Venezuela with a Family Visa.  
Documents required (all documents must be certified with Apostille or legalised):
    - Passport
    - Birth and marriage certificate
    - Four identity-sized photos
    - Curriculum Vitae with education, labour experience and copy of titles
    - Medical certificate and criminal records
    - Copy of the labour permit granted by the respective ministry
    - Registry documents of the company in Venezuela
    - The company's tax identification number
    - The company's registration and solvency issued by labour and other authorities
    - Request for entry permit
    - Company's tax declarations
    - Employment offer
    - Required forms duly filled
    - Last income tax declaration
    - Proof of payment of taxes.

The procedures and granting of labour visas and permits may be troublesome due to the number of documents to be filed. The process can take from 3 to 4 months.

## 6 – TAXATION

### THE VENEZUELAN TAX SYSTEM

In general, the Venezuelan Tax System is divided into National Taxes and Local Taxes.<sup>28</sup>

The administrative entity in charge of most of the National Taxes is the National Integrated Service of Customs and Tributary Administration (SENIAT).<sup>29</sup> The SENIAT is divided into several dependencies, such as two National Managements for Internal Taxes and Customs and two General Managements for Internal Operations. It is also composed of nine regional bureaus, which incorporate the Regional Managements of Internal Taxes and the Managements of Principal Customs Bureaus.

TABLE 4  
Main Taxes and Contributions

TAXES	TYPE	BASE	MAXIMUM RATE
Income tax	Individual and Corporate	Earnings	34%
	Hydrocarbons		50%
	Mining		60%
Value Added Tax	Domestic and Imports	Sales	12%
	Sumptuary goods		27%
	Passengers National air transportation and services rendered to the Government		8%
	Exports		0%
	International transportation		6%
Inheritance and Gift Tax	Inheritances and Inter-vivos transfers	Wealth	55%
Alcohol	National production <sup>30</sup>	Litres	USD 1.43
Beer			USD 0.06
Wine			USD 0.02
Wine + Alcohol			USD 1.43
Imported liquor			0.05 – 1.90
Capital Duty	Depending on the jurisdiction	Original capital	1 or 2%
		Capital increase	10%
Stamp Duty	Formation of a company	Capital	0.01 TU
Sports Tax	To stimulate national sports	Net profit	1%
Technology Tax	Commercial activities	Gross revenue <sup>31</sup>	0.5%
	Mining activities		1%
	Oil and gas activities		2%
Anti-narcotics Tax	Over 50 employees	Net profit	1%
Economic Activity Tax	Municipal taxes	Gross revenue	0.15 to 10 %

<sup>28</sup> Most of these 'Local Taxes' are referred to as Municipal Taxes

<sup>29</sup> Servicio Nacional Integrado de Administración Aduanera y Tributaria

<sup>30</sup> Additional tax on sales: 8.5% for beer and wine – 10% for other beverages

<sup>31</sup> Net profit greater than 100.000 TU

### TAX UNIT

This is a measure created to avoid the negative influence of the high rate of inflation on the tax base. All tax instruments and some laws in the country use it, especially in the case of fines and progressive tax rates. Variations in the Tax unit are based on the price index and it usually changes year by year.

### TAX IDENTIFICATION NUMBER (REGISTRO DE INFORMACION FISCAL: RIF)

This identification is compulsory for corporate and personal income taxpayers; and it must be included in almost every transaction, even in non-tax purpose transactions. For instance, it is required for inheritance tax, income tax as well as for any change in the board of directors, address, economic activity, etc.

### VALUE ADDED TAX (VAT)

Common taxpayers are individuals, corporations or any public or private entity engaged in commercial activities such as habitual importers of goods and services, manufacturers, traders and independent providers of services.

Special Tax Payers must withhold 75% of the tax rate.

Examples of Value Added Tax Exemptions:

- Basic food items
- Fertilisers
- Medicines
- Newspapers, books and magazines
- Scientific and educational items imported by government and non for profit organisations
- Transportation of passengers by land or water in Venezuela
- Educational and medical services
- Home electricity, gas and water supply

### INCOME TAX

The Venezuelan Income Tax is based on the taxpayer's worldwide gross income, minus costs and deductions permitted by the law; that is, those normal and necessary expenses incurred by the taxpayer to obtain the income. Income tax paid in other countries is allowed as a tax credit.

Venezuela has signed treaties to avoid double taxation with several countries. Although they follow the same OECD pattern, with the exception of the Andean Countries Pact, each treaty may contain regulations on specific topics which may not be included in other treaties.

Examples of Income Tax Exemptions:

- Severance payments
- Insurance indemnities
- Retirement funds
- Donations, legacies and heritages
- Savings plans
- Capital gains or interest from government bonds
- Scholarships.

Annual inflation adjustments to non-monetary assets and liabilities are compulsory for companies; however, it is optional for individuals engaged in commercial activities.

Venezuelan companies engaged in business with related companies abroad must perform a Transfer Pricing Analysis every year.

A three-year Loss Carry Forward is allowed in order to determine the taxable income.

## TAX RATES

### RESIDENT INDIVIDUALS

Individuals residing in Venezuela shall have the following tax deductible expenses:

- Educational institutes
- Health and medical insurance
- Medical, dental and hospitalisation services
- Interest paid for the acquisition of his/her main residence, or any amount paid for house leasing.

A personal exemption of 774 Tax Units may be chosen instead of the above listed tax deductible expenses.

#### Tariff N° 1

– For the portion up to 1,000 (Tax Units)	6%
– For the portion that exceeds 1,000 up to 1,500	9%
– For the portion that exceeds 1,500 up to 2,000	12%
– For the portion that exceeds 2,000 up to 2,500	16%
– For the portion that exceeds 2,500 up to 3,000	20%
– For the portion that exceeds 3,000 up to 4,000	24%
– For the portion that exceeds 4,000 up to 6,000	29%
– For the portion that exceeds 6,000	34%

Non-resident individuals (who spend less than 183 days in Venezuela during the calendar year or in the year before) are taxed at a proportional rate of 34% on their gross income.

A tax reduction of ten Tax Units (VEF 1,270.00 / USD 201.59) applies for a tax payer, his or her spouse, each ascendant and descendant under 18 years old. Child allowance also applies to those under 25 years old receiving full time education.

### DOMICILED CORPORATIONS

#### Tariff N° 2

– For the portion up to 2,000 UT	15%
– For the portion that exceeds 2,000 up to 3,000 UT	22%
– For the portion that exceeds 3,000 UT	34%

Dividends paid in excess of the corporate taxed net income are taxed with a 34% flat rate.

### WITHHOLDING TAX

There are many activities subject to withholding of tax, which are credited to the final income tax and determined when the yearly income tax return is filed.

**TABLE 6**  
*Withholding tax*

WITHHOLDING TAX	RESIDENT INDIVIDUALS	NON RESIDENT INDIVIDUALS	DOMICILED CORPORATIONS	NON DOMICILED CORPORATIONS
Listed stocks sold	1%	1%	1%	1%
Unlisted stocks sold	3%	34%	5%	5%
International News Agencies	0	0	0	Tariff 2 / 15% (*)
Rental income	3%	34%	5%	Tariff 2 / 15% (*)
Leasing of movable goods	3%	34%	5%	5%
Technical assistance	0	34% / 30%	0	Tariff 2 / 30% (*)
Commissions	3%	34%	5%	5%
Insurance intermediation	3%	0	5%	0
Movies	0	34% / 25%	0	Tariff 2 / 25% (*)
Cargo fares	1%	0	3%	0
Gambling	34%	34%	34%	34%
Lotteries and races	16%	16%	16%	16%
Professional fees	3%	34% / 90%	5%	Tariff 2 / 90% (*)
Other professional fees	3%	34%	0	0
Interest	N/A	34% / 95%	0	Tariff 2 / 95% (*)
Interest paid to foreign financial institutions	0	0	0	4.95%
Other interests	3%	34%	5%	Tariff 2 / 100% (*)
Insurance policies	0	0	0	10% / 30% Net income
Publicity	3%	0	5%	5%
Radio stations	0	0	3%	0
Repair to insured goods	3%	0	5%	0
Medical assistance (Insurance)	3%	0	5%	0
Royalties	0	34% / 90%	0	Tariff 2 / 90% (*)
Services in general	1%	34%	2%	Tariff 2 / 100% (*)
Technical services	0	34% / 50%	0	Tariff 2 / 50% (*)
Wages	According AR-I	34%	0	0

(\*) All payments made in the fiscal year must be accumulated.



TABLE 7

*Withholding tax rates on conventions for the avoidance of double taxation*

	DIVIDENDS	INTERESTS	ROYALTIES	TECHNICAL ASSISTANCE
Income Tax Rates	34%	4.95% Banks 32.60% Others	30.60%	10.20%
Austria	5–15%	4.95–10%	5%	0%
Barbados	5–10%	5% Banks 15% Others	10%	10%
Belgium	5–15%	10%	5%	0%
Belarus	5–15%	5%	5–10%	N/A
Brazil	10–15%	15%	15%	N/A
Canada	10–15%	10%	5–10%	N/A
China	10%	N/A	10%	N/A
Cuba	10–15%	N/A	5%	N/A
Czech Republic	5–10%	10%	12%	12%
Denmark	5–15%	5%	10%	5%
France	5–15%	5%	5%	0%
Germany	5–15%	5%	5%	0%
Indonesia	10–15%	10%	20%	10%
Iran	5–10%	N/A	N/A	N/A
Italy	10%	10%	7% - 10%	0%
Korea	5–10%	5–10%	5–10%	0%
Kuwait	5–10%	5%	20%	N/A
Malaysia	5–10%	15%	10%	10%
Mexico	5%	4.95-10%-15%	10%	10%
Netherlands	0–10%	5%	5% - 7%	0%
Norway	5–10%	5% Banks 15% other cases	12%	9%
Portugal	15% (1996) 10% (1997)	10%	12%	10%
Qatar	5–10%	5%	5%	N/A
Russia	10%–15%	5–10%	15%	10%
Spain	10%	4.95–10%	5%	10%
Sweden	5–10%	10%	10% 7%	0%
Switzerland	10%	5%	5%	0%
Trinidad & Tobago	5–10%	15%	10%	10%
United Arab Emirates	5–10%	10%	10%	0%
United Kingdom	10%	5%	5% - 7%	0%
United States of America	5–15%	4.95% Banks 10% Others	5% 10%	0%
Vietnam	5–10%	10%	10%	10%

## TRANSFER PRICING

Venezuelan taxpayers engaged in business or transactions with related companies abroad must perform a Transfer Pricing Analysis every year and file a specific return reporting their activities with related parties. ATPR are allowed with a maximum length of 4 fiscal years.

The Venezuelan Income Tax Law adopted the ARMS LENGTH principle for transactions between related parties, similar to the concept established in the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations approved by the Organisation for Economic Cooperation and Development (OECD) in 1995, or those rules which replace them.

Some general financial information must be disclosed within the transfer pricing return; but much more detailed information must be included in the transfer pricing study.

## INTERNATIONAL FISCAL TRANSPARENCY REGIME

Venezuelan Taxpayers with direct or indirect investments in branches, legal entities, assets, real estate, stock, bank or investment accounts or any other participation in entities with or without legal personality, trusts, joint ventures, investment funds, or any other similar legal entity created under foreign law, located in low tax jurisdictions are subject to the international fiscal transparency regime, by which the income derived from those investments is deemed to be taxable even though the income, dividends or profit, has not been distributed. A detailed annual return informing those investments must be filed with the annual income tax return.

Low tax jurisdictions are annually listed by the tax administration or are deemed to be those jurisdictions which income tax rate is nil or equal or lower than 20%. Countries signatories of double tax treaties with clause of information exchange are exempted from that presumption.

## OTHER TAXES AND CONTRIBUTIONS

There are other taxes applicable to business organisations, such as social security and technical education contributions, registration taxes, stamp tax and Municipal taxes such as Commercial Patent Tax, which is a tax applied by local governments to commercial or industrial activities carried out within their jurisdiction.

## FOREIGN CURRENCY EXCHANGE CONTROL

The foreign exchange control was established through Presidential Decrees and Agreements between the National Executive Branch and the Central Bank of Venezuela <sup>32</sup>

The issuance and application of foreign exchange control provisions, is performed through the Foreign Trade Centre (CENCOEX – Centro de Comercio Exterior). CENCOEX has the powers to issue general regulations, called ‘Providences’, which relate to requirements for the purchase of foreign currency. CENCOEX can issue or deny authorisations to purchase foreign currency and verify or control the use of the foreign currency.

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<sup>32</sup> Convenio Cambiario No. 1, Gaceta Oficial No. 37.625 dated February 5, 2003

Besides the CENCOEX Providences, there are several Foreign Exchange Agreements between the Ministry of Finance and the Central Bank of Venezuela; which, along with several Resolutions emitted by the Bank and various Ministries, constitute the legal framework of the foreign exchange control regime in Venezuela.

The exchange rate was fixed from the beginning of the current foreign exchange control back in February 2003; since then, it has been modified as follows:

February 2003:	1,600 Bs/\$
February 2004:	1,920 Bs/\$
March 2005:	2,150 Bs/\$
January 2008:	2.15 Bs/\$ (*)
January 2010:	4.30 Bs/\$
February 2013:	6.30 Bs/\$

(\*) On January 2008, Venezuela revalued its currency; going from 1,000.00 old bolivars (Bs) to 1.00 bolivar fuerte (VEF).

From 2014, Venezuela adopted multiple official exchange rates for different sectors of the economy:

	Sector	2014	2015	2016	2017
<b>CENCOEX</b>	Food and medicine	6.30 Bs/\$	6.30 Bs/\$	N/A	N/A
<b>SICAD I</b> (set by auction)	Travellers, students abroad and some specific sectors considered of interest for the Venezuelan economy	11.33 Bs/\$	12.00 Bs/\$	N/A	N/A
<b>SICAD II</b> (set by demand)	Imports and debts	52.10 Bs/\$	170.00 Bs/\$	N/A	N/A
<b>DIPRO</b>	Food and medicine	N/A	N/A	10 Bs/\$	10 Bs/\$
<b>DICOM</b>	All other sectors	N/A	N/A	673.76 Bs/\$	2,697.58 Bs/\$

All individuals and companies interested in purchasing foreign currency from the Central Bank of Venezuela must first register with CENCOEX at the Registry for Users of the Foreign Exchange Administration System (RUSAD – ‘Registro de Usuarios del Sistema de Administración de Divisas’). The registration with RUSAD entails the choice by the interested party of a bank that has been authorised for that purpose by CENCOEX, as the ‘authorised foreign exchange operator’. All dealings with CENCOEX have to be made through an authorised foreign exchange operator. Most local banks have been authorised by CENCOEX as such operators. To register with RUSAD, the interested party must fill in a form obtained from the web page of CENCOEX and present it to the authorised foreign exchange operator of its choice, along with an application for the first “Authorisation for the Acquisition of Foreign Currency” (AAD: Autorización para la Adquisición de Divisas) and a number of documents which include the identification data of the individual or company requesting the registration, financial statements for the last fiscal year and proof of payment of Income Tax, VAT and other national and local taxes. Once registered with RUSAD, the interested party applies for the AAD for any operation to be carried out.

## 7 – ACCOUNTING & REPORTING

### AUDIT REQUIREMENTS

There are no provisions established in the Commerce Code requiring the audit of financial statements for companies.

Only companies which meet any of the following criteria must file audited financial statements:

- a. Companies created with foreign investment – these companies must file annual audited financial statements with the Superintendence of Foreign Investment (SIEX) within 120 days after year-end. Companies formed by multinationals will generally be required to file audited financial statements
- b. Banks and insurance companies – these companies must file audited financial statements within 90 days after year-end with the appropriate regulatory agency. All banks and financial institutions should submit their audited financial statements to the Superintendence of Banks, 15 days prior to their annual shareholder’s meeting
- c. Companies listed on the stock exchange – these companies must file audited financial statements with the Stock Exchange and the National Values Commission (‘Comisión Nacional de Valores’) within 90 days after year-end
- d. Companies approved as Registered Vendors to PDVSA – these must submit an audited financial statement before 31 March each year.

The audit report must be signed by an independent public accountant certified by the Venezuelan Federation of Public Accountants. Audit firms in Venezuela must operate under the name of the Venezuelan legal entity, containing in its name the names of the Venezuelan partners.

### ACCOUNTING STANDARDS

Venezuela has been using international accounting standards since January 2008 (NIC ‘Normas Internacionales de Contabilidad’). And most recently, on March 2011, we adopted the International Financial Reporting Standards Venezuela – IFRS VEN; which are classified into two groups:

1. VEN-NIF for accounting principles applied to large entities, consisting of a Bulletins Application (BU VEN-NIF), which must be applied together with International Financial Reporting Standards (IFRS complete).
2. VEN-NIF SMEs for accounting principles applied to small and medium entities (SMEs), shaped by the Application Bulletins (BA VEN-NIF), which must be applied in conjunction with International Financial Reporting Standard Small and Medium-sized Entities (IFRS for SMEs)

For the purpose of applying the IFRS VEN for the fiscal year beginning 1 January 2011, a small and medium-sized entity is classified as a ‘formally constituted entity that seeks to profit and issue its financial statements with general purpose for its users, including shareholders, creditors, employees and general public’.

Although Accounting Standards in Venezuela (Venezuelan Generally Accepted Accounting Principles – VGAAP) are mainly based on the US accounting model, the preparation of financial statements should observe the following sources (in strict order) for guidance on accounting practices:

1. IFRS to SMEs
2. International Accounting Standards
3. Mexican GAAP
4. United States GAAP (USGAAP).

## **DIFFERENCES BETWEEN VGAAP AND USGAAP**

### **BASIS OF ACCOUNTING**

In most circumstances, USGAAP require that account balances and transactions must be stated in the units of currency of the period when the transactions were originated. This accounting model is commonly known as the 'historical cost basis of accounting'. When US entities consolidate the financial statements of subsidiaries operating in hyperinflation countries such as Venezuela, USGAAP requires the re-measurement of the financial statements using the American dollar (or another similar currency) as the functional currency.

VGAAP requires that historical cost financial statements must be re-expressed in a constant local currency. The methodology adopted by Venezuela for the re-expression of the financial statements into constant currency is generally consistent with the Statement of Financial Accounting Standards (SFAS) 89 suggested methodology.

### **INCOME TAX**

While the USGAAP is based on SFAS 109, VGAAP is based on Auditing Practices Board (APB) 11. Complexities tend to result from the application of SFAS 109 to inflation-adjusted account balances.

### **ACCOUNTING FOR CONTINGENCIES**

VGAAP is consistent with the accounting and disclosure principles set by the USGAAP, SFAS 5.

### **PENSION LIABILITIES**

Defined benefit pension plans are not common in Venezuela, with the exception of government required severance indemnities as previously discussed. However, VGAAP for pension plans is based on SFAS 87, although pension liabilities must be computed using real rates instead of nominal rates and they must be treated as non-monetary items in the re-expressed financial statements.

### **SEVERANCE INDEMNITIES**

Severance indemnities are a defined benefit and should be accounted for in the USGAAP financial statements in accordance with SFAS 87 as discussed above. VGAAP requires that this liability must be recorded at its undiscounted value as if the liability were to settle on the balance sheet date.

### **CAPITALISED INTEREST**

USGAAP requires that interest be capitalised in accordance with SFAS 34. The VGAAP methodology for re-expressing fixed asset balances into units of constant currency requires that capitalised interest be reversed and expensed.

### **OTHER RETIREMENT BENEFITS**

Other post-retirement benefits are not common in Venezuela. VGAAP does not have an equivalent to SFAS 106. Since 1997, Venezuelan entities may choose to record these liabilities on a pay-as-you-go basis or to record a liability based on SFAS 106.

### DEVELOPMENT STAGE COMPANIES

USGAAP generally requires pre-operating costs to be expensed. VAGAAP requires that they be capitalised during the pre-operation period.

### LEGAL RESERVE

The Commerce Code requires that a minimum of 5% of retained earnings should be set aside annually in a reserve account in shareholder's equity until the reserve is equivalent to 10% of the company's capital. The legal reserve is registered as an appropriation of retained earnings.

### RECOGNITION OF THE INFLATION EFFECTS ON FINANCIAL INFORMATION

IFRS to SMEs-Section 31 requires historical amounts to be re-expressed into constant currency. USGAAP requires the use of historical costs. Regulations concerning the inflation adjustment of financial statements are contained in Section 31.

The purpose of the adjustment for inflation is to re-express the financial statements from historical VEF to a constant currency of similar purchasing power. The resulting amounts do not imply they represent the fair market value, replacement costs or any other measure of the current values of the company's assets or prices at which the transactions would commonly be made.

However, financial institutions and insurance companies are still required to prepare their financial statements in accordance with special regulations issued by their related regulatory bodies. Since such bodies have not issued any pronouncement in this regard, the institutions referred to above do not prepare financial statements adjusted for inflation.

The most relevant aspects of the General Consumer Price Index and Mixed Methods are the following:

#### GENERAL CONSUMER PRICE INDEX (CPI) METHOD

As a first step, all items in the financial statements must be classified as either monetary or non-monetary. Items classified as monetary should be reported in historical values, while items considered non-monetary should be adjusted by applying consumer price indexes by their date of origin in accordance with the following formula:

- i) Capital, retained earnings and other shareholders' equity accounts are adjusted through the same method by using the CPI indexes at the date of contribution or generation of each relevant amount
- ii) Items in the profit and loss statements are adjusted by using the yearly average CPI index or the index for the month in which each relevant revenue or expense is generated. Cost and expenses associated with non-monetary assets are adjusted based on the adjustment of each particular asset
- iii) The results of the application of this method are stated in an account denominated 'Net Monetary Result' or 'Results due to exposure to inflation' which is a consequence of the Net Monetary Position of the company and is reported as a separate item in the profit and loss statement with the interest expense and currency exchange difference accounts.

### MIXED METHOD

In broad terms, the mixed method is applied following the same guidelines as those of the General Consumer Price Index Method, with the particularity that once the financial statements of the company are adjusted in accordance with said methodology, the values of some of the non-monetary assets are substituted by their current market values as determined in accordance with appraisals, specific indexes, invoices for the latest purchases and other criteria.

### ACCOUNTING RECORDS

Although most Venezuelan companies with which foreign investors may have contact use computer-based accounting systems, the Commerce Code still requires Venezuelan entities to maintain a formal Daily Journal, Inventory Journal and General Ledger. Venezuelan companies comply with this technical requirement by making monthly manual entries to a set of ledgers. The accounting records must be maintained in local currency and in Spanish.

The fiscal year of regulated financial institutions and insurance companies must be the same as the calendar year. The regulatory agency requires two financial audit statements by year; the first period goes from January to June, and the second from July to December. Other companies may choose any twelve-month fiscal year.

The Commerce Code requires all companies to prepare an annual balance sheet and statement of profit and loss, shareholders' equity and cash flow. The said law also requires companies to appoint one or more 'commissaries' or statutory auditors to review the operations and the financial statements of the company and render a report. This report must be presented to the shareholders in an Annual General Shareholders Meeting prior to the approval of the annual balance sheet.

### DUE DILIGENCE

Foreign investors in Venezuela should be prepared to perform significant due diligence prior to investing in a Venezuelan company or forming a joint venture. Due diligence reviews generally focus on the following areas, in addition to substantiation of account balances and other items:

- Reputation and integrity of the proposed Venezuelan joint venture partner or company
- Tax and legal matters – proper incorporation, valid title to property, litigation and tax liabilities. Impact of asset transfers on tax and labour liabilities (severance indemnities are usually very significant)
- Contracts and other agreements
- Availability of accounting records to provide the information required to prepare USD financial statements
- Existence of related-party transactions
- Adequacy of the management information system and internal accounting controls.

## 8 – UHY REPRESENTATION IN VENEZUELA

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### CONTACT DETAILS

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### CONTACTS

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 Position: Partner  
 Email: [l.sotillo@uhy-ve.com](mailto:l.sotillo@uhy-ve.com)

### SOCIAL MEDIA CONNECTIONS

- Twitter: @uhy\_serlet

Year established: 2005  
 PCAOB registered?: Yes  
 Number of partners: 6  
 Total staff: 26

### OTHER IN-COUNTRY OFFICE LOCATIONS AND CONTACTS

Valencia, Puerto Ordaz

### BRIEF DESCRIPTION OF FIRM

UHY SERVICIOS LEGALES & TRIBUTARIOS, S.C. and UHY DURAN & ASOCIADOS are independent audit and consultancy member firms operating from four locations around the country. With 9 partners, 1 associate and around 39 staff, the group provides a wide range of audit, tax and business advisory services to clients ranging from high net worth individuals (HNWIs) and owner-managed businesses, to local companies and multinational organisations. The group specializes in audits; income tax, VAT and international tax planning; tax litigation support; real estate appraisals and RRHH outsourcing services.

### SERVICE AREAS

Audit and outsourcing services  
 Company formation and secretarial services  
 Corporate and personal tax  
 Corporate finance – acquisitions, sales  
 Financial services and personal wealth management advice  
 Forensic accounting  
 General business advice and strategic planning  
 HHRR outsourcing services  
 Legal advice  
 Real Estate appraisals  
 Trusts and private client services  
 Tax consultancy

### SPECIALIST SERVICE AREAS

International tax structures in Barbados, Madeira, Netherlands Antilles.



**PRINCIPAL OPERATING SECTORS**

Accounting  
 Car manufacturing and components  
 Chemicals  
 Construction  
 Distributors  
 Energy: Services, extraction  
 Engineering  
 Food & beverages manufacturing  
 Industrial Products  
 Legal

**LANGUAGES**

Spanish, English.

**OTHER COUNTRIES IN UHY CURRENTLY WORKING WITH, OR HAVE WORKED WITH IN THE PAST**

USA, Ecuador, Puerto Rico, Colombia, Portugal.

**BRIEF HISTORY OF FIRM**

The firm's foundations were laid in 2005 with the formation of a partnership by a group of professionals from PriceWaterhouseCoopers, Coopers & Lybrand, and Deloitte who came together to create a new firm with a high level of quality, service and professionalism for small and medium-sized businesses in Venezuela. With a focus on service delivery for its internationally-minded clients, in September 2006 the firm joined UHY.

Now with 9 partners, 1 associate and a staff located in four offices across Venezuela, the firm continues to grow and recent service line expansion has included appraisals and corporate services. Our partners have experience attending oil companies such as Deltaven and Palmaven, both subsidiaries of Petróleos de

Venezuela S.A. (PDVSA). Their experience also includes work with BJ Service Company, a subsidiary of Baker Hughes, consolidating and translating financial statements, budgeting, and founding the Internal Audit Department.

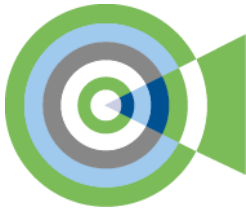
One of them provided support to UHY Advisors, USA, for a forensic audit to a company which provides integrated services including leak repair, hot tap, and technical bolting. He also brought his experience working as outsourcing in the finance department of Conoco Phillips in Venezuela; and also worked for the tax department of the Venezuelan petrochemical company (Pequiven).

Special services involving accounting and tax advice has been conducted at Proppants de Venezuela, manufacturer of ceramic proppants for oil and gas wells.

**UHY DURAN & ASOCIADOS**

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 La Alegría, Valencia  
 Estado Carabobo  
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## LET US HELP YOU ACHIEVE FURTHER BUSINESS SUCCESS

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To find out how UHY can assist your business, contact any of our member firms. You can visit us online at [www.uhy.com](http://www.uhy.com) to find contact details for all of our offices, or email us at [info@uhy.com](mailto:info@uhy.com) for further information.

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