Global Public M&A Guide - Venezuela

General Legal Framework

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# 2. General Legal Framework

[Last updated: 1 January 2025, unless otherwise noted]

**2.1. Main legal framework**

The main rules and principles of Venezuelan laws regarding public bids for Target Companies are contained in:

The Securities Markets Law ("**SML**"); and

The Rules on Public Offers to Acquire, Exchange and Take Control of companies subject to public offering of their shares and other rights over them ("**OPA Rules**").

Public takeover bids are subject to the regulatory powers of the National Superintendence of Securities Office ("**SNV**"), which is vested with the powers to control and regulate the capital markets in Venezuela.

As a general matter, the SNV has discretionary powers to supervise, control and enforce compliance with the SML and the OPA Rules during any public takeover bid in Venezuela. Such powers entitle the SNV to implement any mechanism it considers necessary and/or convenient to protect the interests of the Target Company's minority stockholders. In addition, the SNV is empowered to apply administrative fines in case of breach of the regulations and even to request criminal prosecution before the competent courts upon the occurrence of certain breaches of such regulations.

Please note that the SNV is also entitled to grant certain exemptions from the rules on public takeover bids that would otherwise apply, when the situation is duly justified and when such exception does not affect the rights of the minority stockholders of the Target Company.

**2.2. Foreign investment regulations**

Foreign Investments in Venezuela are governed by the Constitutional Law of Productive Foreign Investments ("**LCIEP**"), published by the Extraordinary Official Gazette No. 41,310 dated 29 December 2017, and issued by the National Constituent Assembly.

The LCIEP abrogated and superseded Decree No. 1,438 with Rank, Value and Force of the Law of Foreign Investments, published in the Extraordinary Official Gazette No. 6,152 dated 18 November 2014 ("**LFI**"). Notwithstanding the entering into force of the LCIEP, the National Executive has not yet issued the required regulations.

Under the LCIEP, the Ministry of the People's Power with competence in trade matters is the governing entity with the mandate to establish policies for fulfilling the purposes of the LCIEP. Its scope of powers was significantly expanded under the LCIEP, in comparison with the LFI, to include more implementing powers such as the administration of the registry of foreign investments. However, its current implementation of the powers is unclear. In practice, the Foreign Trade Bank (BANCOEX) is the foreign investments authority, which is, as of 1 January 2025, providing information and services regarding registration requests.

No governmental prior approval is required for foreign investments in Venezuela. However, the LCIEP, provides that foreign investments must be registered in order to be recognized by the government. To benefit from the rights set forth in the LCIEP and applicable laws, investors must register their direct foreign investments. As a result, the rights of foreign investors will only become effective after registration. The LCIEP has not yet provided the procedures, requirements or conditions to register a foreign investment. In practice, although the regulations of the LCIEP have not been issued yet, BANCOEX is receiving requests for the registration of investors and investments, including the filing of certain forms providing information about such investment and the submission of documents.

Once registered, the foreign investment authority will issue a Certificate of Registration of Direct Foreign Investment to reflect the amount in United States dollars. Foreign investors must update the Certificate if there is a modification of the information related to the investment or investors in the company.

(a) Treatment of direct foreign investment

The principal requirements set forth in the LCIEP regarding the treatment of foreign investments are the following:

The LCIEP requires that 100% of the constitutive value of foreign investments should be represented by assets (physical or intangible) located in Venezuela.

Subject to express authorization from the governing body, the minimum amount to register a foreign investment is the equivalent of (i) EUR 800,000.00 or (ii) RMB 6,500,000.00 or (iii) their equivalent in any other foreign currency.

Foreign investments should remain in the country for at least two years; after that period, investors can make certain remittances abroad.

Foreign investors may distribute dividends, and at the end of the first fiscal year, up to 100% of the profits or dividends derived from their registered and updated foreign investment. In cases of *force majeure* or extraordinary economic situations the National Executive may reduce this percentage to between 60% to 80% of the profits.

The LCIEP includes a general provision whereby the National Executive can limit remittances in cases of extraordinary circumstances that affect the economic and financial safety of the nation. The scope of this general limitation is not clear regarding the specific limits indicated in the previous paragraph.

After two years foreign investors can remit to their country of origin any income obtained from selling their shares or investments in Venezuela, or from a capital reduction.

The LCIEP maintains the rights of foreign investors to totally or partially reinvest the profits obtained in local currency (to be recognized as foreign investment).

Pursuant to Article 31 of the LCIEP, if a company that has received foreign investment is liquidated, the total amount of the registered foreign investment may be remitted abroad.

(b) Notices

The following matters must be notified to the governing entity (expected to be the Ministry of the People's Power) according to the LCIEP:

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

The reinvestment of profits under the provisions of the LCIEP. The governing entity may raise objections to such transaction within 60 days following the filing date.

(c) Inspection powers, preventive measures and sanctions

Under the LCIEP, the governing body for foreign investments has a wide range of powers, including dictating administrative control mechanisms, designating public prosecutors for control and audit of foreign investments and soliciting information from foreign companies. Additionally, the governing body has powers to issue preventive measures, which are not specified but will be developed in the Regulations of the LCIEP.

Failure to comply with the LCIEP carries a fine up to 2% of the total investment, with another 1% added if more than one obligation is not met. In the case of a repeated failure to comply, 3% will be added to the total fine. Fines must be paid in the same currency as the original investment, and within 15 working days from the applicable notice.

(d) Jurisdiction

The LCIEP states that disputes must be subject to the jurisdiction of the Venezuelan courts and does not permit international arbitration. The LCIEP provides certain limited exceptions to this and allows the use of other dispute resolution mechanisms within the framework of the integration of Latin America and the Caribbean.

Venezuela has also executed a number of bilateral agreements for the promotion and protection of investments with Argentina, Barbados, Germany, Belarus, Canada, Chile, Costa Rica, Cuba, Denmark, Ecuador, Spain, France, United Kingdom, Iran, Lithuania, the Netherlands, Paraguay, Peru, Portugal, Czech Republic, Sweden, Switzerland, Uruguay, Palestine, Libya, Syria, and Belgium-Luxembourg Economic Union. As a result, disputes that may arise between a foreign investor whose country of origin is one with which Venezuela has a treaty or agreement in force for the promotion and protection of investments, could be submitted to international arbitration under the terms of the respective treaty. The treaties with Brazil, Russia and Italy have not entered into force yet. The treaty between Venezuela and the Netherlands ended on 1 November 2008 and the treaty between Venezuela and Ecuador ended on 16 May 2017. However, with respect to investments made prior to the date of termination of the treaties, their provisions remain in force for a period of 15 years and 10 years, respectively, from the date of termination.

**2.3. General principles**

As a general matter, under the SML and OPA Rules, the stockholders of a Target Company must be afforded equivalent treatment and if a person or entity intends to acquire a significant participation or control of such Target Company, the stockholders must have the same opportunity to sell and must be protected.

In this regard, according to the SML and the OPA Rules, any person and/or entity (the "**Bidder**") that intends to indirectly or directly acquire, in a single act or through successive acts, shares representing more than 10% of the capital stock (a "**Significant Participation**") of a Target Company, or the control over such Target Company disregarding the percentage of shares to be acquired, must comply with the procedures established by the SNV for such purposes.

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