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Venezuela Transforms Hydrocarbons Sector With New Hydrocarbons Law Amendment

By Alexandre R. Chequer, Pablo C. Ferrante, Michael P. Lennon Jr., Jose L. Valera, David H. Weiss, Alejandro López Ortiz, Gustavo Mata Morreo and Federica M. Castro*

In this article, the authors examine the new Venezuela law that has introduced sweeping changes to the regulatory framework governing the exploration, extraction, transportation, refining and marketing of hydrocarbons in the country.

Venezuela has enacted and published the Law Amending the Organic Hydrocarbons Law (the Hydrocarbons Law Amendment), introducing sweeping changes to the regulatory framework governing the exploration, extraction, transportation, refining, and marketing of hydrocarbons in the country. The Hydrocarbons Law opens new pathways for private sector participation, reflecting a recalibration of Venezuela's approach to its oil and gas sector. Notably, most provisions of the Hydrocarbons Law Amendment entered into force upon publication; however, Articles 51, 55, 56, 57, 58, and 59 (addressing the royalty and tax regime) entered into force after 60 continuous days following publication (i.e., April 3, 2026).

FRAMEWORK FOR PRIMARY ACTIVITIES

The Hydrocarbons Law Amendment establishes three permissible structures for conducting primary activities (exploration, extraction, collection, transportation, and initial storage):

- Directly by the National Executive or through companies exclusively owned by the Republic or its subsidiaries;
- By "Mixed Companies" in which the Republic or a public entity holds a participation greater than 50% of the share capital, granting it shareholder control; and
- By private companies domiciled in Venezuela, under contracts entered into with companies exclusively owned by the Republic or its subsidiaries. Companies that carry out primary activities are designated as "operating companies."

The Hydrocarbons Ministry (the Ministry) retains broad authority to grant operating companies the right to exercise primary activities and may transfer

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ownership or other rights over state-owned movable or immovable property for such activities. Notably, the Ministry may revoke these rights when operators fail to comply with their substantial obligations in a manner that prevents achieving the purpose for which such rights were transferred.

MIXED COMPANY REQUIREMENTS

Mixed Companies conducting primary activities are subject to specific requirements and conditions. The maximum duration of such arrangements is 25 years, extendable for a period to be agreed by the parties, not exceeding 15 years. This extension must be requested from the Ministry after half the period for which the right to carry out the activities was granted has elapsed, and before five years prior to its expiration. The incorporation of Mixed Companies and the conditions governing primary activities must be authorized by the President of the Republic and notified to the National Assembly.

Additionally, the majority (state-owned) shareholder maintains a right of first refusal for the acquisition of shares in case of assignment, sale, or transfer by the private shareholder. All lands and permanent works, including installations, accessories, and equipment, as well as acquired, generated, processed, and interpreted data, must be maintained in good condition and delivered to the Republic, free of encumbrances and without compensation upon the termination of the rights granted.

ENHANCED RIGHTS FOR MINORITY SHAREHOLDERS

A significant innovation in the reform is the framework permitting minority shareholders in Mixed Companies to obtain certain operational and commercial rights. The Ministry may authorize minority shareholders to:

- Directly market all or a portion of the Mixed Company's production;
- Open and manage bank accounts in any currency and jurisdiction for the use and administration of funds; and
- Exercise the technical and operational management of the Mixed Company, directly or through a specialized service provider.

The cost of these oil services must be reasonable, and the Mixed Company must be sufficiently efficient so that the direct cost of production per barrel is equal to or less than the cost of production of a company exclusively owned by the State or its subsidiaries, in comparable circumstances. When any of these activities is authorized, the shareholders must enter into the relevant agreements or contracts, or incorporate modifications to existing agreements.

NEW CONTRACTUAL FRAMEWORK FOR PRIMARY ACTIVITIES

The Hydrocarbons Law Amendment introduces a new contractual mechanism whereby companies exclusively owned by the Republic or their subsid-

iaries may enter into contracts with private companies domiciled in Venezuela for the execution of primary activities. Under these arrangements, the operating company assumes comprehensive management at its exclusive cost, account, and risk, and must demonstrate financial and technical capacity through a business plan approved by the Ministry. The Republic retains ownership over hydrocarbon deposits. The remuneration for operating companies under these contracts consists of: (1) a percentage participation in the volumes produced, which may be directly marketed by the operating company for its own account once governmental obligations are fulfilled, or (2) any other form of profit participation agreed in the contract.

Companies exclusively owned by the Republic or their subsidiaries may also grant operating companies the right to use existing assets and materials and assign the right to use the operational area and delimited area, with prior Ministry authorization. As consideration for such use, the operating company must pay a percentage of the volume of production. Upon contract termination, the operating company must return leased assets and transfer ownership of all assets incorporated, constructed, or acquired during the contract term to the state-owned company, including all data obtained, generated, processed, and interpreted, free of encumbrances and without generating any payment or compensation obligation.

Additionally, contracts for primary activities must maintain the originally agreed economic-financial equilibrium, and the National Executive shall delegate to the Ministry the authority to make necessary adjustments to restore economic equilibrium when modifications in the legal, fiscal, regulatory, or contractual framework negatively and substantially affect project economics.

ROYALTY AND TAX FRAMEWORK

The Hydrocarbons Law Amendment introduces a reformed royalty and tax regime that entered into force 60 days following enactment (i.e., April 3, 2026). The State has the right to a royalty of up to 30% from volumes of hydrocarbons extracted and not used in operations. The National Executive, through the Ministry, with prior opinion from the Ministry of Finance, will determine the royalty percentage(s) applicable to each project during its execution phases, taking into account the nature of the project, capital investment requirements, the economics of the project, and the need to ensure international competitiveness. The National Executive is authorized to modify the royalty percentage within the 30% limit when demonstrated necessary to guarantee the economic equilibrium of the project. The royalty may be payable in kind or in money, totally or partially, as may be required by the National Executive.

The Hydrocarbons Law Amendment replaces the prior extraction tax with a new "Integrated Hydrocarbons Tax." The tax base for the Integrated Hydro-

carbons Tax is the total gross income accrued monthly, and the rate is up to 15% of the corresponding tax base. The National Executive will determine the applicable rate for each project. The Integrated Hydrocarbons Tax is to be determined and advanced on a monthly basis and settled annually, and is payable in kind or in money, as required by the National Executive.

Additionally, the National Executive may reduce the income tax rate when demonstrated necessary to guarantee the economic equilibrium of the project. Certain exemptions from certain taxes and parafiscal contributions are also contemplated. The activities covered by the Hydrocarbons Law Amendment are also not subject to a social responsibility commitment nor to state or municipal taxes.

DISPUTE RESOLUTION MECHANISMS

The Hydrocarbons Law Amendment introduces express provisions permitting alternative dispute resolution mechanisms for disputes arising from hydrocarbon activities. Disputes of any nature arising from the performance of hydrocarbon activities that cannot be amicably resolved by the parties may be decided by the competent courts of Venezuela or through alternative dispute resolution mechanisms, including mediation and arbitration. The Ministry, in consultation with the Attorney General's Office, is required to establish "general guidelines for dispute resolution clauses," and clauses agreed upon in accordance with such guidelines will not require the opinion or authorization provided for in the Organic Law of the Attorney General's Office and the Commercial Arbitration Law.

DIRECT MARKETING AUTHORIZATION

As a general rule, the commercialization of hydrocarbons, as well as derived products indicated by the National Executive, shall be carried out by state-owned companies. However, the National Executive, through the Ministry, may authorize Mixed Companies and private operators to directly market all or a portion of the volumes of hydrocarbons produced in contract areas. Such authorized direct commercialization does not imply the transfer of ownership of the deposits or authorization for the constitution of liens on deposits or on sovereignty rights.

Companies authorized to directly market hydrocarbons must:

- Comply with the commercialization plan approved by the Ministry;
- Guarantee that sale prices are equal to or higher than market prices achieved by a company exclusively owned by the Republic or its subsidiaries;
- Comply with tax and environmental obligations derived from such

direct commercialization; and

- Attend to the domestic supply set by the Ministry.

TRANSITIONAL PROVISIONS

The Hydrocarbons Law Amendment contains important transitional provisions:

1. Regulations issued before the law's entry into force shall continue to apply in matters not in conflict with the new law, until new regulations are issued.
2. Within 180 days following entry into force, the Ministry must conduct an evaluation of Mixed Companies constituted before the entry into force and may agree on adjustments necessary to bring them into compliance with the new law. During this period, the tax regime in force before enactment will continue to apply, and in no case shall the adjustment process imply or generate a worsening of conditions agreed with companies that have carried out or carry out the comprehensive management of Mixed Companies.
3. The Productive Participation Contracts (in Spanish, Contratos de Participacion Productiva or CPPs) and other contractual models entered into based on the Constitutional Anti-Blockade Law maintain their full validity and legal effectiveness. However, within 180 days following entry into force of the Hydrocarbons Law Amendment, the parties to such contracts must make necessary adjustments to bring them into compliance with the terms of the new law, with the prior tax regime continuing to apply during this period and no worsening of previously agreed contractual conditions permitted.
4. Within 30 days following entry into force, the Ministry was required to issue rules necessary for the determination, declaration, and payment of the Integrated Hydrocarbons Tax.

REPEALING PROVISIONS

The Hydrocarbons Law Amendment repeals several prior legal instruments, including: the Law on Regularization of Private Participation in Primary Activities; the Organic Law that Reserves to the State Assets and Services Related to Primary Hydrocarbon Activities; the Law Creating the Special Contribution for Extraordinary and Exorbitant Prices in the International Hydrocarbon Market; Decree No. 5,200 with Rank, Value, and Force of Law on Migration to Mixed Companies of the Association Agreements of the Orinoco Oil Belt; and the National Assembly Agreements approving the Terms and Conditions for the Creation and Operation of Mixed Companies and the Model Contract. The Gaseous Hydrocarbons Law remains in force and effect.

IN SUMMARY

The Hydrocarbons Law Amendment transforms Venezuela's regulatory framework, introducing significant opportunities for private participation. Key takeaways include:

- Expanded dispute resolution options through arbitration, with streamlined approval procedures for clauses following Ministry guidelines;
- New contractual structures enabling private operators to assume operational control while retaining a share of production;
- Enhanced minority shareholder rights in Mixed Companies, including direct marketing, banking, and operational management rights;
- A reformed royalty and tax regime with flexible rates up to 30% for royalties and 15% for the new Integrated Hydrocarbons Tax, with various exemptions from other taxes and contributions;
- Transitional provisions requiring adjustments to existing Mixed Companies and Anti-Blockade Law contracts within 180 days, with protections against worsening of agreed conditions; and
- Grandfathering of existing Productive Participation Contracts under the Anti-Blockade Law with continued validity.

CONCLUSION

The Hydrocarbons Law Amendment represents a significant evolution in Venezuela's hydrocarbon regulatory framework, providing for meaningful opportunities for private participation and investment. It expands dispute resolution options through arbitration, introduces new contractual structures, enhances minority shareholder rights in Mixed Companies, and includes a reformed royalty and tax regime, transitional provisions, and a grandfather clause for Productive Participation Contracts under the Anti-Blockade Law with continued validity.