



GUIDE TO DOING BUSINESS IN VENEZUELA

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The “*Guide to Doing Business in Venezuela*” presents an overview of some basic aspects of Venezuelan Law. It does not constitute a legal advice. The guide does not intend to be a complete report. The contents herein are for reference only. Prior to taking any action based on the information provided herein, it is necessary to request more detailed information and the assistance of a local attorney.

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1. THE COUNTRY AT A GLANCE:

1.1 Geography

Venezuela is located in the northern part of South America. The country borders to the north with the Caribbean Sea; to the south with Brazil; to the east with the Atlantic Ocean and Guyana; and to the west with Colombia. The total area of the country is 917.450 square km (354.227,44 square miles).

1.2 Population

Venezuela has an estimated population of 24.5 million.

1.3 Capital

The capital city is Caracas, which is located in the central-north part of the country. Caracas has approximately 5 million inhabitants.

1.4 Major cities

Other major cities in Venezuela are Maracaibo, Valencia, Maracay, Barquisimeto, Puerto la Cruz, Maturin and Puerto Ordaz.

1.5 Climate

Since Venezuela is close to the equatorial line, there are no seasons; rather there are diverse climates in different regions of the country ranging from tropical to temperate. Venezuela is in the -4 Time Zone (GMT). The average temperature in the country is warm all year round. Caracas is around 82° F (28° C).

1.6 Traveling to Venezuela.

Venezuela is well served by virtually all the major American and European airlines including: American Airlines, Continental, Delta, Air France, Lufthansa, Alitalia, Iberia, Tap, Varig.

Several airlines offer direct flights to the main hub airports in the United States, including: Miami, Houston, Dallas, Atlanta and New York. Additionally, Venezuela is linked to all important cities of Latin America. Direct flights are available to Bogotá, San Jose, Panama, Lima, Rio de Janeiro, San Juan, Mexico and Santiago.

For traveling within the country, there is an important network of local airlines serving almost every important city in Venezuela.

1.7 Visa Requirements

Citizens from certain countries may not require a Visa for visiting Venezuela. It is advisable to consult with the local consular office before purchasing travel tickets to Venezuela. There are two types of Visas available, (i) "Tourist" Visa and (ii) "In transit" Visa. In order to conduct business in Venezuela an "In Transit" Visa is necessary. There

are different types of “In transit Visa” depending on the activity the person wishes to perform in the country.

1.8 Customs Procedures

Personal effects may be brought into the country as luggage up to a declared value of U.S.\$ 3,000. Taxes apply for goods exceeding such declared value.

1.9 Communications

Telecommunications services such as phone, fax and high speed internet connection are widely spread throughout the country. Virtually every major international courier company serve Venezuela, including, Fedex, UPS and DHL. Local private courier services are also available.

1.10 Currency. Exchange rate

The Venezuelan currency is the "Bolivar". The exchange rate is fixed by the government. As of February 2nd 2005 the official exchange rate is as follows:

1 US Dollar = 2.150 Bolivars.

1 Euro = 2.530 Bolivars.

Currency exchange is controlled by the Government. According to the laws the only institution authorized to perform currency exchange activities is the Venezuelan Central Bank, which performs such activities through the authorized Banks and other financial institutions. The exchange illicit law enacted recently prohibits and sanctions currency exchange activities outside the authorized financial system.

1.11 Languages spoken

Venezuela's official language is Spanish, although English is widely spoken in the tourism industry and the business environment.

1.12 Business Hours

Normal business hours are from 8 a.m. to 6 p.m. Stores are usually open from 9 a.m. to 9 p.m. Banking hours are from 8:30 a.m. to 3:30 p.m.

1.13 Holidays

The following holidays are observed in Venezuela: January 1st (new year day), Carnivals (usually last Monday and Tuesday of February), Eastern (2 days in late March or April), April 19th (declaration of independence), May 1st (labor day), June 24th (Carabobo battle), July 5th (independence day), July 24th (Simon Bolivar's birthday), October 12th (Columbus day), December 25th (Christmas day).

1.14 Culture

The Venezuelan culture is a mixture of European, African and local Indians roots with great influence from Spain. Roman Catholicism is the overwhelmingly dominant religion. Venezuelans are well known for their easy-going nature and fun-loving spirit. According

to a recent statement disclosed by the central government the levels of illiteracy in the country are less than 5%.

2. POLITICAL AND COMMERCIAL STRUCTURE

2.1 Political System

According to the current Constitution of 1999, the Bolivarian Republic of Venezuela is a nation governed by Laws with a democratic and participative Government. The power of the State is divided into five powers. (i) Executive, represented by the President of the Republic, the Executive Vice-President, the Ministers of cabinet and other officers of the Public Administration. (ii) Legislative, represented by the National Assembly, (iii) Judicial, represented by the Supreme Court and other Courts created by Law; (iv) Moral, represented by the Attorney General and (v) Electoral, represented by the National Electoral Council. In addition, there are three levels of territorial administration: Federal, State and Municipal.

Venezuela is organized as a decentralized Federal State politically divided into 24 States, one Capital District, and 650 Municipalities. The city of Caracas is the Capital of the Republic and home for all the branches of government

2.2 Economic System

The Constitution guarantees the right to engage in any lucrative or commercial activity. This right, however, is subject to the limitations stipulated in the Constitution and to those established by law with respect to security, health or other matters of national interest. However, pursuant to foreign investment regulations and other related laws, there are some sectors of the economy reserved exclusively for national investors which will be discussed herein below.

Monopoly is not permitted in Venezuela, although certain exclusive concessions may be granted for a limited period of time, for the establishment and exploitation of works and services of public interest.

The State may reserve for itself the right to exploit certain industries or public services, as for example, the Oil and Gas industry. Venezuela has opened its markets to foreign investment in important fields such as banking, insurance, telecommunications and, the oil sector. Foreign investors participate in the oil sector through joint venture agreements with the State owned oil company and through profit-sharing association agreements.

Similar regulations apply to activities of exploration, exploitation and basic industrialization of iron, aluminum and other mineral resources.

2.3 Financial System

The Venezuelan financial system is under the oversight, supervision and regulation of the Superintendence of Banks and Other Financial Institutions. The General Banking Law enacted in 2001 is the main legal body under which universal banks, commercial banks,

mortgage banks, investment banks, development banks, second floor banks, financial lenders, and savings and loan institutions, are regulated.

The Capital Markets Law enacted in 1998 regulates the safety of stock market transactions under the supervision of the National Commission of Securities.

2.4 Legal System

Venezuela belongs to the continental or civil law system which is based on the supremacy of the written law, as opposed to the common law system present in the United States, Canada, the U.K and the commonwealth countries.

The National Assembly discusses and approves laws. Once legislation is approved by the National Assembly, it is sent to the President for its enactment into law and publication in the Official Gazette of the Bolivarian Republic of Venezuela, along with the corresponding order of due compliance.

2.5 Court System

The head of the court system is the Supreme Court which is composed by 32 justices appointed by the National Assembly for a 12 year period. Other special or regular Courts are created by law. The decisions issued by the Supreme Court are not subject to any sort of appeal. The Supreme Court is empowered to annul Laws that violate the Constitution; decide on conflicts of competence between Courts and act as a final appeals Court.

3. INTERNATIONAL LEGAL RELATIONS

3.1 Trade Agreements

3.1.1 The World Trade Organization (WTO). Marrakesh Agreement

Venezuela is founding member of the WTO, as of January 1st 1995. This is the most important international treaty related to foreign trade. Its rules represent the basic regulations for Venezuela's international commercial relations. This treaty supersedes the GATT of 1947. With the access of Venezuela to the WTO, the country applies the provisions of several agreements reached in the Uruguay Round which are integral part of the WTO Agreement. Such agreements include:

- a. The General Agreement on Tariffs and Trade of 1994 (known as the GATT of 1994), including its provisions on investment measures.
- b. The General Agreement on Trade in Services (GATS)
- c. The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)
- d. The Understanding on Rules and Procedures Governing the Settlement of Disputes, and
- e. The Trade Policy Review Mechanisms.

3.1.2 Latin-American Integration Association (ALADI)

This is the largest integration zone in the Region. It is comprised of Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, México, Paraguay, Perú, Uruguay, and Venezuela. ALADI provides a broad umbrella for different kinds of bilateral and multilateral economic integration agreements. Under the flexible mechanisms provided by this Association, Venezuela has reached an important number of Agreements, both with members and non members of ALADI, such as Central American and Caribbean countries. ALADI agreements mainly deal with tariff reductions.

3.1.3 The Group of Three (G-3): The Free Trade Agreement between Colombia, Mexico and Venezuela

The G3 is aimed at setting up a free trade zone among the three member countries. It became in force on January 1st 1995 providing a program on tariff reductions. In addition, it contains specific rules in areas such as custom valuation, rules of origin, investment measures, intellectual property, etc. The G3 covers the basic areas of the economy and most of its rules are inspired by the WTO and NAFTA regulations.

3.1.4 Andean Community

Includes Bolivia, Colombia, Ecuador and Venezuela. It has been in force since 1973. Its goal is the creation of free trade zone for several items among the member countries. The Andean Community is the most significant integration scheme to which Venezuela is member. It has its own institutional framework and many subjects are regulated by common authorities, such as: foreign investment, rules of origin, custom valuation, intellectual property, dumping, subsidies and others.

3.1.5. Central American Common Market (CACM)

Includes agreements with Costa Rica, El Salvador, Honduras and Nicaragua.

3.1.6. Caribbean Community (CARICOM)

Venezuela has signed trade agreements with the Caribbean Community (CARICOM). The goal of CARICOM is the development of an economic area in the Caribbean.

3.1.7. Trade Agreement between Venezuela and Chile

Venezuela signed a trade agreement with Chile aimed at creating a free trade area between the countries and complementing activities in the industrial and service sectors. It also contains provisions for dealing with unfair trade practices, internal tax treatment, government purchases, investments, technical norms, services and dispute resolution.

3.1.8. Trade Agreement between Venezuela and Brazil

Venezuela signed a trade agreement with Brazil aimed at making the best possible use of the production factors in order to stimulate economic complementation between the two countries, strengthen fair competition; and encourage balanced development.

3.1.9 Other Bilateral Agreements

Venezuela has also signed trade agreements with Cuba and Trinidad and Tobago.

3.1.10 MERCOSUR

The Venezuelan government recently announced the inclusion of Venezuela as a full member in MERCOSUR, which current members are Argentina, Brazil, Uruguay and Paraguay.

3.2 INVESTMENT AGREEMENTS

Venezuela has signed several treaties to protect foreign investment, such as:

3.2.1 Multilateral Agreements

- a. Multilateral Investment Guarantee Agency. (MIGA).
- b. Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID).
- c. Convention on the Recognition and Execution of Foreign Arbitral Awards (New York Convention, United Nations)

3.2.2. Bilateral Agreements

Venezuela is signatory to Bilateral Agreements for the promotion and protection of investments with the following countries: Netherlands, Argentina, Switzerland, Ecuador, Chile, Portugal, Barbados, the Czech Republic, Lithuania, Denmark and the United Kingdom. Venezuela and the United States are signatories to an agreement aimed at protecting and promoting bilateral investment through the Overseas Private Investment Corporation (OPIC).

3.2.3. Taxation Agreements

Venezuela has signed treaties to avoid double taxation with several countries including, the USA, Chile, Netherlands, Canada, Argentina, Colombia, Spain, France, Italy and Great Britain, Brazil, Germany, Switzerland, Trinidad and Tobago and Portugal, UK, France, and Italy.

3.2.4. Intellectual Property Agreements

Venezuela has been a member of the World Intellectual Property Organization (WIPO) since 1984, and has ratified the following agreements administered by WIPO:

- The Bern Convention for the Protection of Literary and Artistic Works;
- The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention);
- The Paris Convention for the Protection of Industrial Property;

Additionally, Venezuela is a member of the Agreement on Trade-related Aspects of Intellectual Property Rights, commonly known as TRIPS, and also applies the Chapter XVIII of the G-3 Agreement between Mexico, Colombia and Venezuela.

The most important provisions for the protection of intellectual property in Venezuela are the following Decisions of the Andean Community:

- Decision N° 344, on Industrial Property;
- Decision N° 345, on the Protection of holders of Plant Varieties rights; and,
- Decision N° 351, on Copyright and Neighboring Rights.

3.3 INTER AMERICAN AGREEMENTS

Venezuela has been a member of the Organization of American States since 1952, and has ratified under this continental cooperation scheme, among others, the following treaties:

- a. Inter-American Convention on conflict of Laws relating to Checks.
- b. Inter-American Convention on conflicts of Laws relating to Business Organizations.
- c. Inter-American Convention on Evidence and Information of Foreign Law.
- d. Inter-American Convention on Extraterritorial Enforcement of Foreign Judgments and Arbitral Awards.
- e. Inter-American Convention on International Commercial Arbitration. (Panama Convention)
- f. Inter-American Convention on Receipt of Evidence in a Foreign Country.
- g. Inter-American Convention on Requisitorial and Rogatory Letters.
- h. Inter-American Convention on the legal regime for the use of Powers of Attorneys in foreign jurisdictions
- i. Inter-American Convention on the Law Applicable to International Contracts.

4. EXPORTING TO VENEZUELA

4.1 Venezuelan Tariffs

Venezuelan tariffs are usually set on ad-valorem basis. However, sometimes import duties are calculated on specific or mixed basis. According to Rule 989 which contains Venezuela's custom Tariffs, there are four levels of tariffs applicable for imported goods. The highest range is up to 20%, the middle 15% and 10%, and the lowest is 5%. Vehicles are an exceptional case with tariffs up to 35%.

In 1990, Venezuela adopted the Harmonized Code on Nomenclature of Merchandise, which was incorporated into the customs tariff list. The Venezuelan Tariff contains all specific legal data applied to every item imported into the country, including non-tariff barriers.

The custom tariff's rule also expressly indicates that the agreements set forth in the integration treaties signed by Venezuela, will prevail over the custom tariff. Therefore, a preferential treatment will take place in the event that the products are imported from any member country to these treaties to which Venezuela is a member. The applicable tariff would depend on the specific agreement. For example, zero percent (0%) would be applicable if the products are imported from members of the Andean Group: Colombia, Ecuador or Bolivia (assuming the products comply with the corresponding rules of origin).

4.2 Special Duties

Customs services tax is 1% of the value of the merchandise imported into the country.

4.3 Importation Restrictions

No license or governmental permit is required for importing goods. However, there are goods subject to restrictions and previous licenses (Non-tariff barriers, "NTB"). Such NTB's are properly listed and differ depending on the nature of the restriction imposed. Basically, restrictions are imposed based on public health and security reasons.

The International Trade Unfair Practices Law enacted in 1992 prevents dumping and subsidiary practices by establishing policies to prevent its harmful effects in the national production.

5. VENEZUELAN EXPORTS

5.1 Policies

Venezuela has developed a policy of expansion and incentive for the exportation of non-traditional products, (i.e. products other than oil & gas, iron and aluminum). In this sense, a special fund to finance non-traditional exports was created to grant loans with preferential conditions to Venezuelan exporters (Bank of Foreign Trade BANCOEX).

Depending either on the destination or the nature of the product, an exporter may be requested to fulfill specific prerequisites such as export licenses, sanitary certificates, or certificates of origin.

6. INVESTING IN VENEZUELA

Foreign Investment is regulated by Rule 2.095 and Decisions 291 and 292 of the Cartagena Commission Agreement. According to these regulations, all foreign investments are deemed approved and they are only subject to registration with the appropriate agency, provided that they do not contravene any provision of general applicability under Venezuelan legislation.

A foreign investment may be made to create a new company or other business organization; however, it is also possible for foreign investors to acquire equity participation in local companies with no other limitations than those established for the particular economic activity in the applicable legislation.

The Superintendence of Foreign Investments (“SIEX” for its acronym in Spanish) is the administrative office in charge of regulating foreign investments, technology transfer agreements and external credits, however, some exceptions may apply for particular sectors of the economy as follows:

- Foreign investments in the banking sector are regulated by the Superintendence of Banks and other Financial Institutions;
- Foreign investments in the insurance business are regulated by the Superintendence of Insurance;
- Foreign investments, technology transfers and external credits in the oil & gas, and mining business are regulated by the Ministry of Energy & Mines.
- External credits to public sector entities are regulated by the Ministry of Finance’s Office of Public Finances.

The degree of control a foreign investor may exercise over a Venezuelan company depends on the sector of the economy in which the local company operates and the foreign investment classification assigned to the company by the appropriate agency.

There are three possible classifications: (i) foreign (more than 49% foreign equity); (ii) mixed (49% or less but more than 19.9% foreign equity); and (iii) national (less than 20% foreign equity). In order to classify the company as foreign, mixed or national, the appropriate agency considers both the percentage of equity held by the foreign investor and the degree of control which the foreign investor is entitled to exercise over the technical, financial, administrative and commercial management of the company. In

addition, shares owned by foreign investors with no decision power in the technical, commercial, administrative and financial management of the company, are not computed for the purpose of classifying the company as foreign, mixed or national.

The allowed proportion of foreign investment depends on the sector in which the company is planning to develop its activities, as there are some limited sectors reserved to national enterprises.

7. ESTABLISHING A BUSINESS IN VENEZUELA

7.1 Branch Office

Branches are treated by the Venezuelan Commercial law as local corporations, therefore, branches are authorized to carry out business without other limitations than the legal provisions applicable to companies organized in Venezuela.

Branches are not regarded as different or autonomous entities, so parent companies retain full liability for the branch's operations. In terms of limits of liability, even though an amount of capital must be allocated to the branch by the parent company, branches' liability is determined by the parent company's capital.

Documents required for incorporation of a branch includes:

- a. The Articles of Incorporation and By-Laws of the foreign parent company.
- b. A power of attorney for the branch's legal representative.
- c. An extract of the country of origin's law applicable to stock corporations.
- d. The resolution of the corresponding corporate body approving the incorporation of the branch with express mention to the amount of capital allocated to the branch and the person designated to act as legal representative. These documents must be legalized before a Venezuelan Consulate and translated into Spanish by an official translator, if drafted in a language other than Spanish. The documents must be registered at the corresponding Commercial Registry Office and then published in a local newspaper. In addition, branches are subject to the all taxes and contributions applicable to any other business organization.

7.2. Corporations

The Venezuelan Commercial Code is the most important piece of legislation applicable to companies incorporated in Venezuela. In general terms, companies or business associations are those which have as their corporate purpose one or more commercial activities. Nevertheless, corporations and limited partnerships are always attributed a business nature by law, whatever their purpose may be, except when they are engaged exclusively in agricultural activities. Corporations are governed by the articles of incorporation agreed among the partners, by the provisions of the Commercial Code, the Civil Code and the provisions of special laws which may be applicable to a particular business area.

The Venezuelan Commercial Code provides four different types of corporations: the stock corporation, which is the most common form of corporation used in Venezuela to carry out business; the limited liability company, the partnership and the limited partnership.

The stock corporation does not require a minimum share capital and the transfer of shares is not subject to the formalities which apply to the limited liability company. The company is managed by one or more administrators or a Board of Directors whose members could be foreigners.

7.2.1 Stock Capitalization Requirements

The shareholders must subscribe the total capital stock and pay at least 20% of the stock subscribed by the time of incorporation. Although no minimum amount of capital stock is required, particular requirements may be applicable on certain business areas. The Commercial Code requires at least two shareholders for the purpose of incorporation, although immediately thereafter all shares may be transferred to a single shareholder.

With regard to capital contributions, limited liability companies are required to have a minimum capital of Bs. 20,000.00 and a maximum capital of Bs. 2,000,000.00. However, the law does not require a minimum or maximum capital contribution for stock corporations. Investments may be made in cash or by capitalization of goods.

7.3. Incorporation of a Subsidiary

Foreign investors are allowed by law to incorporate wholly owned subsidiaries. As mentioned earlier, the Commercial Code requires at least two shareholders for valid incorporation of business organizations, although immediately thereafter all shares may be transferred to a single shareholder.

7.4. Joint-Ventures

Foreign investors may also enter into joint-ventures. It is advisable to provide in detail all the rights corresponding to minority shareholders as there are very few minority protection provisions in the Commercial Code.

7.5. Local Participation Laws

There are some reserved sectors in the economy which require local participation, including:

a. Sectors reserved to national enterprises by Foreign Investment Regulations:

a.a Television and radio broadcasting and Spanish language newspapers.

a.b Services in areas which require the participation of professionals whose practice is governed by national laws.

b. Areas reserved by special laws to national companies. i.e Oil & Gas (reserved to the State, with few exceptions)

Companies operating in all other sectors may be formed with up to 100% of foreign ownership. Such companies may remain as foreign owned companies indefinitely.

7.6. Purchase of Business in Venezuela by a Foreign Corporation

Subject to the requirement to file notice of the transaction with the appropriate agency, a foreign investor may (i) purchase the shares of another foreign investor in any Venezuelan company; (ii) purchase the shares of the national investor in any Venezuelan company; or (iii) purchase the assets of any company in Venezuela, assuming that the acquisition by the foreign investor does not contravene specific Laws.

Similarly, a foreign investor may purchase the shares of another foreign investor in any offshore company holding shares in any Venezuelan company. In this case, it is not necessary to file notice of the transaction with the appropriate agency.

Except for the sectors reserved to national companies, foreign investors may freely purchase stock of listed companies in the stock exchange. In this case, registration with the appropriate agency has to be done for the stock owned by the foreign investor at the end of the calendar year. As a result, foreign investors may participate in the stock exchange and buy and sell shares during one year only compelled to comply with the general regulations of stock exchange applicable to both national and foreign investors.

With regard to the sale of shares, the Foreign Investment Regulations establish that the acquisition of shares owned by national investors by foreign investors is subject to registration within sixty (60) calendar days from the execution of the commercial transaction.

7.7. Capital Increases

Foreign investors may subscribe capital increases in any Venezuelan corporation, providing prior notice of the transaction to the appropriate agency. The foreign investment after the capital increase may not exceed the maximum proportion allowed by law in the particular economic sector.

7.8 Tax regulations

All profits derived from stock sales of companies incorporated in Venezuela are subject to taxation. Transfers of stocks made through the stock exchange are subject to a proportional tax of 1% of the price withheld by the stock exchange.

The purchase of an ongoing business or some of its assets is subject to a tax withholding of five percent (5%) of the gross sales price. The Tax should be withheld by the purchaser and paid to the national treasury.

Certain tax advantages apply to joint ventures as well as tax payers whose income derives from the manufacture of industrial products and agro-industries, tourism, agriculture, and fishing.

7.9. Other Issues

7.9.1 Registration Requirements

To legally incorporate a corporation in Venezuela, the law requires registration of the articles of incorporation and By-Laws before the Mercantile Registry Office and its subsequent publication in a local newspaper. Additionally, shareholders must file the evidence of payment of the capital contribution.

Failure to fulfill all legal requirements results in the company not being considered legally incorporated and therefore the shareholders, the administrators and any other person who has acted on behalf of the company, will be deemed personally liable for all ventures the company enters into.

7.9.2 Company Administration

For the purpose of incorporation, there are no restrictions regarding nationality or residence of directors or officers. Nevertheless, the labor relations manager must be a Venezuelan citizen. The direction and supervision of the corporation may be vested in a Board of Directors. By virtue of the law, an Annual Shareholders Meeting must be held at least once a year to approve the financial statements and the distribution of profits and to appoint officers and examiners of the company, when necessary.

7.9.3 Place of Shareholders Meetings

The Commercial Code does not establish any limitation in this regard except that the call for meeting must specify where it will be held. Therefore, the Articles of Incorporation must provide rules on the place of the meetings.

7.9.4. Registration Fees

There is a registration fee for incorporation of the company and registration of the branch equivalent to one percent (1%) of the capital stock or the capital allocated to the branch, plus administrative fees payable to the Registry Office.

7.9.5. Administrative Regulations

After incorporation of a business organization several requisites must be fulfilled, such as: registration with the Venezuelan Internal Revenue Service in order to obtain a tax ID number (RIF); classification of the company by the appropriate agency; and registration of the foreign investment with the appropriate agency, when applicable.

7.10. Agency and Distribution Agreements.

Although the concept of “Agency” is not specifically regulated in the law, it is used as a convenient way through which a foreign corporation can carry out a certain level of operations in Venezuela. Under this kind of agreement, an individual or legal entity undertakes activities to initiate negotiations and promote business on behalf of a principal. The agent is not considered a duly authorized officer of the principal and, therefore, may not assume any obligations on its behalf, unless a power of attorney has been granted in his name. Usually, the agent limits his activities to act as an intermediary between the company and local purchasers or potential clients, and to carry out marketing activities.

A distribution agreement is an agreement pursuant to which a person or legal entity (distributor) purchases goods in its own name and for its account from a manufacturer or wholesaler in order to sell them to third parties for a profit. There are no statutory rules specifically governing distribution agreements, so general principles of commercial law are applied to this kind of relationship.

Neither agents nor distributors are considered employees under Venezuelan Labor Law, unless the relationship includes subordination.

8. INTELLECTUAL PROPERTY

8.1. Intellectual Property Protection

Decision 486 approved by the Andean Community Group (Bolivia, Colombia, Ecuador, Peru and Venezuela) on September 15 2000 includes Intellectual Property protection rights. This Decision is the product of the adjustment of the Venezuelan legislation to the TRIP'S Agreement. Decision 486 is a comprehensive piece of legislation that regulates Patents, Trade Secrets, Trademarks, and denominations of origin. It establishes regulations against acts of unfair competition linked to intellectual property rights and enforcements procedures, such as: Action of repossession, provisional measures and border measures.

8.2 Patents:

Decision 486 protects invention patents, utility models, layout designs (topographies) of integrated circuits and industrial designs, save for the following exceptions:

- a) Inventions that violate public policy, moral or proper customs;
- b) Inventions which are obviously contrary to the health or life of people or animals, to plant preservation or environment protection;
- c) Plants, animals, and essential biological processes for the production of plants or animals other than non-biological or microbiological processes;
- d) Diagnostic, therapeutic, and surgical methods for the treatment of humans or animals.

Decision 486 also establishes that the following items shall not be considered as inventions:

- a) Discoveries, scientific theories, and mathematical methods;
- b) Any living thing, either complete or partial, as found in nature, natural biological processes, and biological material, as existing in nature, or able to be separated, including the genome of any living thing;
- c) Literary and artistic works or any other esthetic creation protected by copyright;
- d) Plans, rules, and methods for the pursuit of intellectual activities, playing of games, or economic and business activities;
- e) Computer programs and software, as such are protected by copyright; and

f) Methods for presenting information.

The compulsory license system allows any interested party, especially local industrials and entrepreneurs, to obtain a license either for a local production or importation of the invention. The applicant does not have to show technological and economical capacity to exploit the invention, however it is necessary to prove that the proposed user tried to obtain a contractual license from the patent holder on reasonable commercial terms and that such effort was not successful within a reasonable period of time.

8.3 Utility Model Patent:

According to Decision 486, a utility model is any new shape, configuration, or arrangement of components of any device, tool, implement, mechanism or other object that improves or modifies a previous model. Sculptures, architectural works, or objects that are purely esthetic in nature can not be protected under this kind of patent.

8.4 Layout designs (topographies) of integrated circuits:

Decision 486 complies with the TRIPS agreement by protecting patents of integrated circuit layout designs . It defines layout design as the three-dimensional arrangement of elements, regardless of form, and their interconnection into an integrated circuit, as well as the three-dimensional arrangement prepared for use in an integrated circuit to be manufactured. The layout design shall be protected if it is original, which means that is not in common use in the integrated circuit industry.

8.5 Industrial Designs :

Regarding industrial designs, Decision 486 extends its protection period to 10 years from the filing date. This new legislation also allows the registration of textile designs.

8.6 Trade secrets:

Trade secret is defined as any undisclosed information that may be used for any productive, industrial, or commercial activity that is capable of being transmitted to a third party, as long as that information is secret, has commercial value and is subject to reasonable steps to keep its secret condition.

8.7 Plant Varieties:

Decision 345 sets forth the protection system for plant varieties. Such system establishes that a Certificate of breeders shall be conferred to those plant varieties that comply with the requirements of novelty, distinctness, uniformity and stability.

The Certificate entitles its owner to exclusively engage in the following activities regarding the protected plant variety:

- Production, reproduction, multiplication or propagation;
- Preparation for the purposes of reproduction, multiplication or propagation;
- Offering for sale;
- Sale or any other act that entails placing reproductive, propagating or multiplication material on the market for commercial purposes;

- Exportation;
- Importation;

Decision 345 provides that in exceptional circumstances affecting national security or public interest, the national government may declare the protected variety freely available subject to equitable compensation to the certificate's owner.

8.8 Trademarks:

Decision 486 includes a full range trademark system protecting commercial slogans, collective trademarks, trade names, labels or symbols, geographical indications (appellations of origin and indications of origin) and well-known distinctive signs. The protection is awarded for renewable 10 years periods.

8.9 Certification Marks:

Certification Marks are any sign applied to products or services by the manufacturer or provider to guarantee quality or other characteristics.

8.10 Indications of Origin:

This relates to a particular geographical area such as a country, region, locality or place. The geographical name is used to identify a product by its qualities, reputation, or characteristics which are exclusively or essentially attributed to the geographical environment where it is produced, including both natural and human factors.

8.11 Trade Names:

Protection of a trade name is given to individuals or legal entities who use it for the first time in commercial activities. The protection ends when the name is no longer used or when the business who is using it ceases to exist.

According to the Law, the Trademark Office may refuse to grant a trade name in the following cases:

- a) when the name consists totally or in part of a sign that is contrary to morality or public order;
- b) when its use may create confusion in commercial circles or in the public as to the identity, nature, activities, line of business, or any other aspect of the company or establishment that is identified by that name;
- c) when its use may cause confusion in commercial circles or in the public as to the corporate source, origin, or other characteristics of the goods or services produced or marketed by the company; or,
- d) when a prior application for registration of the trade name already exists.

8.12 Well-Known marks:

Decision 486 introduces new regulations in order to set the limits for the protection of these marks only for those cases when it is possible to produce any of the following effects:

- a) the risk of confusion or association with the owner of the sign, or with the businesses, activities, goods, or services belonging to that owner;
- b) unjust economic or commercial injury to the sign's owner by the weakening of the distinctive force or commercial or advertising value of that sign; or,
- c) unfair exploitation of the sign's prestige or fame.

In order to determine whether a mark is well-known, the following criteria, prevails:

- a) the extent to which it is known in the relevant public sector in any member country;
- b) the age of the distinctive sign and the size of the geographical area where it is used in and outside any member country;
- c) the age and the size of the geographical area where the distinctive sign is promoted, in or outside any member country, including its advertising and presentation at fairs, exhibitions, or other events in connection with the goods or services, the establishment, or the activity to which it is applied;
- d) the value of all investments made in promoting the distinctive sign or the establishment, activity, goods or services to which it is applied;
- e) sales and income figures of the owner, both internationally and in the country where the protection is sought, in respect of the distinctive sign which well-known character is alleged;
- f) the extent of the inherent or acquired distinctiveness of the sign;
- g) the book value of the sign as a corporate asset;
- h) the volume of orders from individuals interested in obtaining a franchise or license to the sign in a specific territory; or,
- i) the existence of significant manufacturing, purchasing, or storage activities by the owner of the sign in the member country where the protection is sought;
- j) the international trade-related aspects; or,
- k) the existence of an application for registration of the distinctive sign in the member country or in any other country.

8.13 Copyright System

The Venezuelan copyright system consists of the Venezuelan Copyright Law and Decisions 351 and 486 of the Andean Community group. The system provides an adequate and effective protection to the authors and owners of rights in the intellectual, literary, artistic or scientific field.

The copyright protection is awarded for the following terms:

- The life of the author plus sixty years.
- Anonymous, pseudonymous, audiovisual, phonographs and computer software works shall be protected by a period of sixty years from publication date or from first communication.

9. TAXATION SYSTEM

General Taxation Principles

The Venezuelan taxation system is based on the Constitution which contains the fundamental principles on this matter, including:

- a. Equality Principle: This principle states that the income tax system should foresee a just distribution of the taxes in accordance with the economic capacity of every individual.
- b. Legality Principle: Every tax must be created and regulated by law.
- c. Generality Principle: The taxation system should be applied on a general basis.
- d. World-wide income: The income obtained in the country is taxed, as well as the income obtained abroad for those considered as residents or other parties domiciled in Venezuela. Non-domiciled entities with a permanent establishment in Venezuela must pay taxes based on the profits from territorial or extraterritorial sources from such permanent establishments.

9.1.2 Income Tax Law

The Venezuelan Income Tax Law states that the income obtained in the country by taxpayers, be them residents in the country or not, is taxed as well as the income obtained abroad for those considered as resident or other parties domiciled in Venezuela. Non-domiciled legal entities with a permanent establishment in Venezuela must pay taxes based on the profits from territorial or extraterritorial sources attributable to such permanent establishment.

Venezuela has entered into Agreements to prevent double taxation with the following countries: United States, Italy, France, Germany, Portugal, Czech Republic, Trinidad and Tobago, the Netherlands, Switzerland, the United Kingdom of Great Britain and North Ireland, Belgium, Denmark, Barbados, among others. When there are no Treaties subscribed by Venezuela with a given country, the Income Tax Law provides all the mechanisms to be applied.

The Tax Law defines taxpayers as follows: individuals, legal entities and permanent establishments located in Venezuela. Regarding foreign investors, the Law considers that a company carries out operations in Venezuela through a permanent establishment, when either directly or indirectly through a legal representative or an employee, such company owns any sort of office or established place of business in Venezuela, or any other center of activities in which to develop its activities either in whole or in part. A foreign company will also be regarded as having a permanent establishment in Venezuela when there is evidence of the existence of a head office or branch.

The legal form to determine the Income Tax is based on the taxpayer's gross income less the costs and deductions allowed by the Law, that is, those normal and necessary expenses incurred in the country by taxpayers in order to obtain their income.

The Tax Law incorporates the concept of fiscal or tax unit, which is a referential numeric value expressed in local currency which is subject to change every year depending on the previous year inflation rate. The fiscal unit is commonly used as a reference value to express the amount of fiscal obligations. The current value of the tax unit has been updated to Bs. 33.600,00.

The Tax Law establishes that the annual income obtained by business entities is subject to a progressive tax rate as follows:

<i>Taxable Income (in Tax Units)</i>	<i>Tax Rate</i>
Up to 2,000	15%
From 2,000 to 3,000	22%
Over 3,000	34%

Residents are also subject to a progressive tax rate that ranges from a minimum of 6%, for an annual taxable income of up to 1,000 fiscal units; to a maximum of 34%, for an annual taxable income of over 6,000 fiscal units.

The Tax Law defines non-residents as those individuals who have not stayed in the country for more than 183 days during the calendar year or in the year before. Non-residents are taxed with a proportional rate of 34% of their gross income.

Capital profits and dividends are also taxable according to the following rules: The Income Tax Law defines dividends as the quota that corresponds to each share in the profits of companies and other assimilated taxpayers, including those resulting from participation quotas in limited liability companies.

Dividends are subject to a proportional tax applied only if they correspond to profits that have not been taxed at the level of the dividend distributing company.. The net income is declared by the taxpayer through financial statements made in accordance with the Generally Accepted Accounting Principles. The net income is the basis for the calculation of taxes. The proportional tax rate on dividends, when applicable, is 34% and it is subject to an anticipated withholding of 1% of the value of the dividend distributed in shares.

Exporting goods to Venezuela is not an activity subject to income tax as it is considered as extraterritorial income for the foreign supplier since the source of income was not in the national territory. The importation of goods is subject to customs tax paid by the local importer.

9.1.3. Value Added Tax (VAT)

The VAT is applied on the selling of goods, the rendering of services and importation of goods and services. The VAT rate is established annually by Law, and ranges from (8%) to (16.5%). Currently, the VAT rate is set to (14%).

9.1.4 Bank account withdrawals tax (IDB)

Every withdrawal from a Venezuelan bank account is subject to a 0.5% Tax.

9.1.5 Other taxes

There are other taxes applicable to business organizations, such as social security contributions, registration taxes, stamp tax and, in particular, the 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.

9.2. Currency exchange control

Currency exchange is controlled by the Government. According to the limitations set forth in this matter, the Venezuelan Central Bank has the exclusive right to perform currency exchange activities through its authorized dealers (Banks and other financial institutions). The Exchange rate is fixed by the government. The Currency Administration commission (CADIVI) is the government office in charge of administering the exchange control regime.

9.2.1 Currency Exchange Criminal Law

As of October 15th 2005, currency exchange activities performed outside the authorized financial institutions are strictly forbidden and penalized. This Law establishes several requirements for business transactions in foreign currency.

9.3. Labor relationships.

The Venezuelan Organic Labor Law (LOT) is the most important legal body that regulates labor relationships in the country. This Law establishes several principles, including:

General Principles:

Territoriality and Public Policy:

The provisions of the Organic Labor Law, (LOT) are of territorial application and represent public policy, which means they can not be contractually modified. Labor Law applies to Venezuelans and foreigners on any part of their labor relations rendered or contracted in the country. The law also applies to employees of foreign enterprises for the services provided in Venezuela, even on temporary basis.

No Waivers:

The rights and obligations established in the Labor legislation cannot be waived by employees during the employment relationship. This means that any agreement between employer and employee that reduces or discard a right or obligation is null and void.

Equality:

Any discrimination based on affiliation, age, sex, race, marital status, religious beliefs,

political or social condition is expressly forbidden. Nobody may be subject to discrimination in his right to work due to criminal records. It is also forbidden to include such conditions in job offers, however, labor contracts may include the normal references to nationality, sex, age and marital status, which are customary, without breaking the law.

Nationality requirements:

Foreign employees shall not exceed 10% of the total work force in any business. The labor administration may approve exceptions in particular cases. Additionally, the heads of industrial relations departments, human resources departments, captains of vessels or aircraft, shall be Venezuelan.

Prescription:

Rights arising from a labor relationship prescribe one year after the termination of the relationship and those arising from labor accidents two years after the accident. These statutes of limitations may be "interrupted" by various means such as claims filed before the courts or the Ministry of Labor.

Parties of the labor relationship

Employee:

Is the individual who mainly performs intellectual work. A worker is a person who performs manual work.

Management employee:

Is the person who intervenes in the company's decision-making or represents the employer before other employees or third parties and may substitute the employer, partially or totally, in the exercise of his functions.

Trustworthy employee:

Is the employee who has supervision tasks, and has access to critical information vital for the business.

Employer:

Is the individual or legal entity who in his own name, is in charge of an establishment, exploitation or task of any nature with the aid of employees.

Employer's Representative:

Is the person who exercises functions of direction and administration such as director,

manager, administrator or head of industrial relations, and is considered by law the employer's agent in labor relationships.

Intermediary:

Is the person who in his own name and normally, for the benefit of another person, uses the services of one or more employees. The intermediary is jointly liable with the beneficiary of the work regarding the rights of the employees. The employees employed by intermediaries shall enjoy the same benefits as those of the employees employed directly by the beneficiary of the work.

Contractor:

Is the individual or legal entity who agrees in contract to perform works or services by his own means on behalf of somebody else. If the work carried out by the contractor is of the same or related nature to that of the beneficiary of the work or service, both the contractor and the beneficiary of the work are jointly liable for the obligations which arise in favor of the employees.

Employer Substitution:

Is the transmission of the company's property from one employer to another. If the employee continues his normal work with the new employer by the agreement with the previous employer, the employer is deemed substituted and both employers share joint liability toward the employees last one year.

Labor regulations establish an obligation to give notice of employer substitution to the employee, the Ministry of Labor and the corresponding union. The Law grants the employee the right to terminate the labor relationship and claim payment for unjustified dismissal if he does not agree with the substitution.

Labor contracts:

For Undetermined Period of Time:

The work agreement is deemed for an undetermined period of time unless the parties clearly express their will to contract solely for the performance of a specific job or for a specific period of time. Labor contracts have no formalities and can be presumed for most kinds of work. It is advisable to draft labor contracts in writing, since they serve as evidence for critical issues such as obligations, conditions, salary, and date of incorporation.

Some employees enjoy absolute job stability, which means they cannot be dismissed unless previous authorization from the Labor administration is obtained based on justified cause according to the Law.

Relative job stability is granted by law to permanent employees with more than three (3) months of service as long as they are not employed in the management of the company. These employees may be dismissed without justified cause but then their severance payments are increased by law.

Labor courts are authorized by law to determine whether an employee has absolute, relative or no job stability and whether the cause of termination of contract is justified or not.

For fixed period of time:

These kind of agreements have a specific date of initiation and termination, and are limited by law only to the following cases: a) when the nature of the service requires so; b) when its purpose is the provisional, legal substitution of an employee and c) when Venezuelans are contracted in foreign countries. Contracts of this nature should be in writing as they evidence an exception to what the law generally presumes.

When the contract is extended more than once, or successive contracts of this nature are entered into by the same parties within thirty (30) days of the expiration of the previous contract, the labor relation must be considered for an undetermined period of time.

In the case of qualified employees, a contract may not be subscribed for more than three (3) years; in the case of normal employees it may not be subscribed for more than one (1) year.

For a particular job:

This kind of contract lasts the entire length of time required for the execution of a given job and concludes once the job is completed. The contract should clearly express the work to be executed by the employee, and therefore it is advisable to draft it in writing.

Relative job stability is granted by Law to these employees during the performance of their contractual task as long as they are not employed in the management of the company.

Written agreements:

The law does not require any labor contract to be in writing, but it is advisable to do so as this serves as evidence of the terms of the engagement, its duration, pay, and all other circumstances which may later need proof.

When the contract is written, one copy shall be given to the employee, and the contract must contain the following specifications: a) name, nationality, age, civil status and domicile or residence of both the employer and the employee; b) the service to be rendered, shall be determined with the greatest possible accuracy; c) duration of the contract or indication that it is for an undetermined period of time, depending upon the

case; d) the work or labor to be carried out, when agreed for a determined work, and the nature of the work assigned to the employee in other cases; e) the duration of the ordinary work day; f) the amount of the salary or the manner of calculating it, and its form and place of payment; g) place in which the service is to be rendered; and h) any other legal stipulation upon which the parties agree, such as regulations on vacations and bonuses.

Legal Limitations :

Working hours :

The law establishes a maximum of 44 working hours a week for day work, 35 hours a week for night work and 42 hours a week for mixed shifts. The daily shift may not exceed 8 hours, and the night shift may not exceed 7 hours.

A maximum shift of 11 hours a day may be required to employees in management or "reliable employees", as well as those that perform surveillance or discontinuous or intermittent work. It may also be applied to work which requires the presence of a single employee or of such nature that precludes it from being subject to the normal working day.

Overtime:

The law establishes a 50% surcharge on the basic hourly wage to be paid for overtime and it may not legally exceed 10 weekly hours with a maximum of 100 hours a year.

Holidays:

The law establishes a 50% surcharge on the basic daily wage in payment for work performed on holidays and days off.

Participation in the Company's Benefits :

In addition to the salary and bonuses paid to employees, the employer should distribute among its employees 15% of the company's profits at the end of every fiscal year, however, this percentage may vary due to the employer economic performance.

This distribution must be equal to, at a minimum, 15 days of salary for each employee. The maximum limit is fixed at four (4) months' salary for companies which capital stock is greater than One Million Bolivars (Bs. 1.000.000, 00) and employ more than 50 people. For companies with a capital stock lower than One Million Bolivars (Bs. 1.000.000, 00) or with a payroll of less than fifty (50) employees the maximum limit is set to two (2) months' salary.

Other labor benefits include holidays and vacations. Employers must pay employees their wages for the days of vacation, plus a special bonus determined by Law.

Seniority:

After three (3) months of continued service, the employee is entitled to a seniority payment equal to five (5) daily wages for each month worked. After the first anniversary the benefit increases two (2) additional daily wages per year, up to a maximum of thirty (30).

Other benefits in case of termination of the contract:

- After more than three but less than six months of service, the employee is entitled to a payment equivalent to fifteen daily wages.
- After more than six months of service but less than one year, the employee is entitled to a payment equivalent to forty five daily wages
- After one year of service and a fraction thereof of six months or more, the employee is entitled to a payment equivalent to sixty daily wages.

Other Labor Obligations

- The company must be registered before the regional office of the Ministry of Labor in the jurisdiction where it is located.
- The company must be registered before the National Institute of Technical Education.
- The company must be registered before the Social Security Institute.
- The company must pay Lay-Off duties.
- The company must pay Housing Policy Law duties.

10. BANKRUPTCY

Bankruptcy is regulated in the Venezuelan Commercial Code. The provisions related to bankruptcy apply to both legal entities and individuals. There are, however, certain exceptions in the case of financial institutions and other entities regulated by the General Banks Law.

According to the Law, when a company has lost more than a third (1/3) of its capital stock value, the administrators must call a Shareholders Meeting to decide whether they will reimburse the capital, reduce it to the amount existing or liquidate the company. The shareholders may decide to continue operations and not take any decision at that time.

However, when the loss has reached more than two thirds (2/3) of the capital stock, the company will necessarily enter into liquidation, if the shareholders do not reimburse the

capital or limit it to the existing equity. Also, if the shareholders do not take any decision, the company has to be liquidated. In such a case, the administrators may not engage in new business operations to avoid personal liability. Administrators may be liable for criminal sanctions if fail to call for a shareholders meeting when a company has incurred losses exceeding two thirds (2/3) of the capital stock.

The Commercial Code also includes a benefit for debtors called Moratorium. It is possible to apply for such a benefit when the merchant's assets exceed its debts. Normally moratorium is granted for one year to allow a friendly liquidation, but nevertheless it is also possible to allow a merchant to recover and the Court may grant an extension for another year. All proceedings are conducted under the Court's supervision. During the moratorium process, a trustee and a creditor's committee will be appointed to review all documentation, the credits and measures to be taken.

As for bankruptcy, the Commercial Code distinguishes three kinds: fortuitous, guilty and fraudulent bankruptcy. Fortuitous bankruptcy occurs due to fortuitous events or *force majeure* that leads to a cessation of payments and the impossibility to continue in business; a guilty bankruptcy occurs when there is negligent conduct by administrators; and fraudulent bankruptcy occurs when there are acts that may be considered as willful misconduct.

Bankruptcy may only be declared by a commercial court when a cessation or suspension of payments is present. This decision is important as the effects of the bankruptcy will be considered as of the date the cessation of payments occurred. The date of cessation of payments may not be more than two years before the Court's decision. Gratuitous acts during the term of two years and ten days prior to the declaration of bankruptcy are considered null and void. Onerous acts may also be considered null and void if the people who contracted with the bankrupt had knowledge of the insolvency when entering into the agreements.

11. DISPUTE RESOLUTION

Venezuela boasts one of the most modern Commercial Arbitration Laws in the Latin American region. Enacted in 1998, the new law replaced the old rules contained in the Code of Civil Procedure, substantially improving Venezuela's arbitration policy. One of the most important contributions of the new arbitration law is that it provides authorization for the development of private arbitration centers.

Currently, there are two major providers of Dispute Resolution services, (i) The Arbitration and Conciliation Center of the Caracas Chamber of Commerce (CACCC), and (ii) the Conciliation and Arbitration Center sponsored by the Venezuelan-American Chamber of Commerce (CEDCA). Both institutions are private entities that target their services to large domestic and international companies facing commercial disputes.

The Commercial Arbitration Law, as well as the treaties subscribed by Venezuela, particularly, the United Nations Convention on Recognition and Execution of Foreign Arbitral Awards (New York Convention) and the Inter-American Convention on International Commercial Arbitration. (Panama Convention), guarantees the enforceability of both international and national arbitral awards.