PKF International Limited

Doing Business in Venezuela

(Bolivarian Republic Of Venezuela)



LOCAL KNOWLEDGE, GLOBAL EXPERTISE

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Contents

Contact Us in Venezuela 1

Foreword 2

Demographic and Environmental Overview 3

A profile of VENEZUELA 3

Economic summary 3

Services and exchange controls 4

Consumer Protection and Special Industries 5

Intellectual and industrial property rights 5

Consumer and user protection 5

Legal Framework for Business 6

Accounting regulations in VENEZUELA 6

Accounts controls in VENEZUELA: Statutory audits 6

Content of financial data to be published: Annual accounts 7

Legal audit limits 7

Forms of Business Organisations 8

Setting up a VENEZUELA company 8

Share Capital Corporation (Compañia Anonima . C.A.) (Sociedad Anonima . S.A.) 8

Limited Liability Partnership (LLP) (Sociedad de Responsabilidad Limitada . S.R.L.) 8

Limited Liability Co. (LLC) (Compañia en comandita simple o por acciones) 8

General Partnership (Compañía en nombre colectivo) 9

Partnership 9

Branch of a Foreign Corporation 9

Governing Documents 9

Directors 9

Forming a Company 9

Registration Requirements and Filing Procedures for Public Securities 10

Shareholdings by Non-residents and Foreign Companies 10

Taxation 12

The VENEZUELA tax system 12

Corporate Tax 13

Capital Gains Tax 13

Value Added Tax (VAT) 13

Temporary Advance Payment Scheme of Income Tax Applicable to special taxpayers 14

Tax on Large Financial Transactions 14

Large Patrimony Tax 15
Fringe Benefits Tax (FBT) 15
Local Taxes 15
Other Taxes 15
Determination of Taxable Income 17
Foreign Tax Relief 18
Corporate Groups 18
Related Party Transactions 18
Withholding Tax 18
Exchange Control 18
Personal Income Tax 19

Labor Law 22

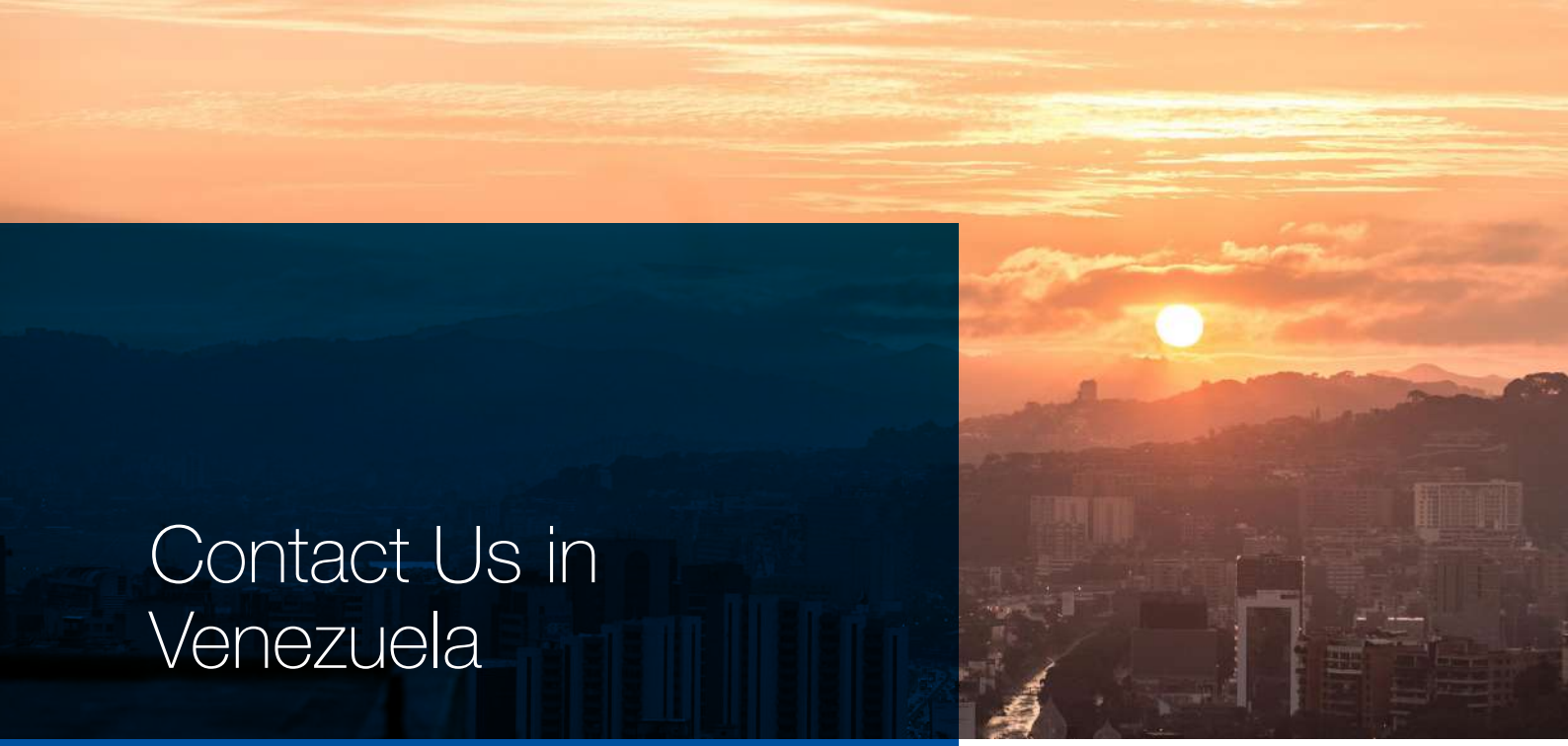
An outline of employment law 22
Recruitment 22
Standard regulations for employment contracts 22
Visas and work and residence permits 23
Social Security 23
Prevention of occupational hazards 24

E-business Legal Framework 25

Civil and commercial regulations 25
Intellectual and industrial property rights 26

Appendix 27

Reference web sites 27



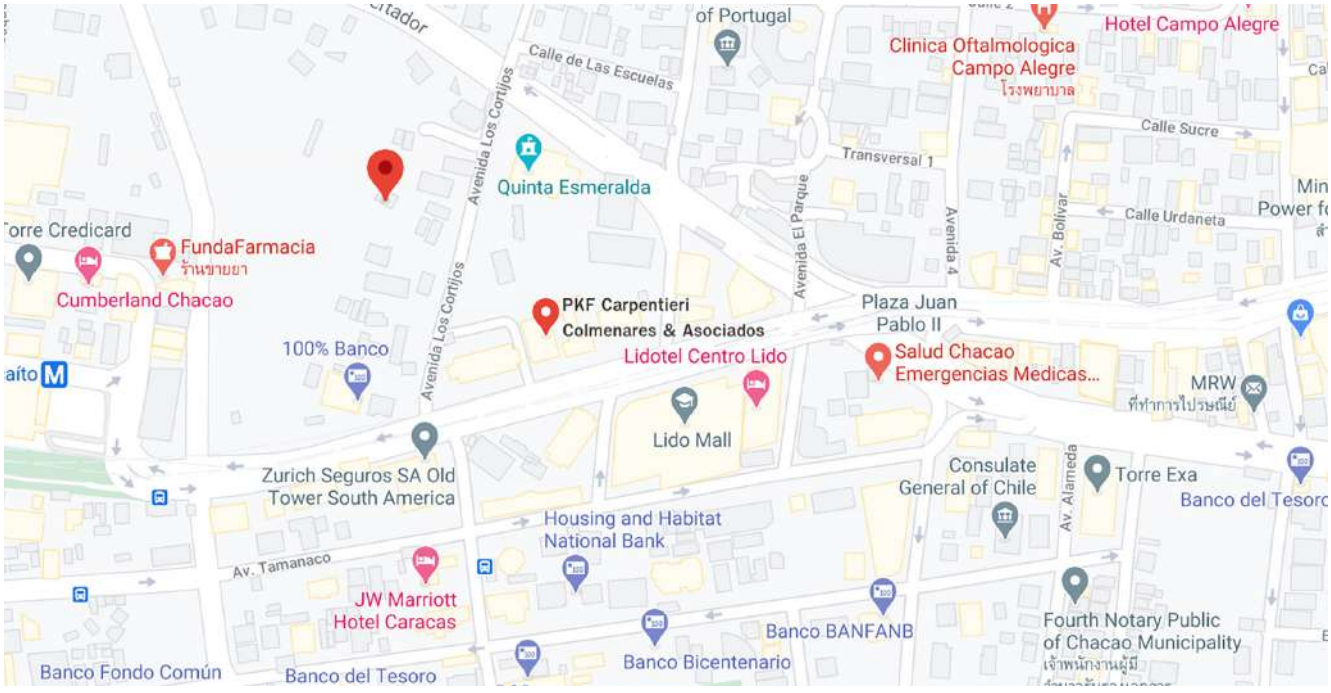
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Foreword

The PKF Doing Business in VENEZUELA publication provides an overview of the most important aspects of doing business in VENEZUELA and we trust it will be both informative and useful.

Venezuela ranks among the top countries in Latin America in terms of investment potential, but capitalizing on the wealth of opportunities can be a mammoth task without local help on hand.

Natural resources and an idyllic geographic location have made Venezuela a magnet for foreign investment. It is home to 55% of crude oil reserves in the Western Hemisphere and 18% of global reserves, and also has the eighth largest gas reserves in the world, holding approximately 195.2 billion cubic feet. Thanks to a privileged location on the Northern Coast of South America, there is good access to the East Coast of the US and quick connections to the Panama Canal, Central America and the Caribbean.

PKF believe that Venezuela is a country with a committed and highly skilled population, where the quality of work and the focus on long-term goals prevail over short-term benefits for the individual. PKF is very experienced with assisting clients to enter the Spanish market and assists in many areas of business. Notably, the main areas in which PKF specialises in are as follows:

- Auditing
- Consulting
- Corporate services
- Business advice
- Taxation compliance and advice services
- Outsourcing
- Human resources



Demographic and Environmental Overview

A profile of VENEZUELA

Venezuela, officially the Bolivarian Republic of Venezuela (Spanish: República Bolivariana de Venezuela), is a country on the northern coast of South America, consisting of a continental landmass and many small islands and islets in the Caribbean Sea. It has a territorial extension of 916,445 km^2 (353,841 sq mi) and the population of Venezuela was estimated at 28 million in 2019. The capital and largest urban agglomeration is the city of Caracas.

The continental territory is bordered on the north by the Caribbean Sea and the Atlantic Ocean, on the west by Colombia, Brazil on the south, Trinidad and Tobago to the north-east and on the east by Guyana. The Venezuelan government maintains a claim against Guyana to Guayana Esequiba. Venezuela is a federal presidential republic consisting of 23 states, the Capital District and federal dependencies covering Venezuela's offshore islands. Venezuela is among the most urbanized countries in Latin America; the vast majority of Venezuelans live in the cities of the north and in the capital.

Economic summary

Venezuela has a market-based mixed economy dominated by the petroleum sector, which accounts for roughly a third of GDP, around 80% of exports, and more than half of government revenues. Per capita GDP for 2016 was estimated to be US$15,100, ranking 109th in the world. Venezuela has the least expensive petrol in the world because the consumer price of petrol is heavily subsidized. The private sector controls two-thirds of Venezuela's economy.

The Central Bank of Venezuela is responsible for developing monetary policy for the Venezuelan bolívar which is used as currency. The president of the Central Bank of Venezuela serves as the country's representative in the International Monetary Fund. The U.S.-based conservative think tank The Heritage Foundation, cited in *The Wall Street Journal*, claims Venezuela has the weakest property rights in the world, scoring only 5.0 on a scale of 100; expropriation without compensation is not uncommon.

As of 2011, more than 60% of Venezuela's international reserves was in gold, eight times more than the average for the region. Most of Venezuela's gold held abroad was located in London. On 25 November 2011, the first of US$11 billion of repatriated gold bullion arrived in Caracas; Chávez called the repatriation of gold a "sovereign" step that will help protect the country's foreign reserves from the turmoil in the U.S. and Europe. However government policies quickly spent down this returned gold and in 2013 the government was forced

to add the dollar reserves of state owned companies to those of the national bank to reassure the international bond market.

Manufacturing contributed 17% of GDP in 2006. Venezuela manufactures and exports heavy industry products such as steel, aluminium and cement, with production concentrated around Ciudad Guayana, near the Guri Dam, one of the largest in the world and the provider of about three-quarters of Venezuela's electricity. Other notable manufacturing includes electronics and automobiles, as well as beverages, and foodstuffs. Agriculture in Venezuela accounts for approximately 3% of GDP, 10% of the labor force, and at least a quarter of Venezuela's land area. The country is not self-sufficient in most areas of agriculture. In 2012, total food consumption was over 26 million metric tonnes, a 94.8% increase from 2003.

Services and exchange controls

The Venezuelan banking market comprises various financial institutions such as commercial banks, investment banks, savings and loan associations and credit unions. There are also other specialized institutions, such as leasing, finance and factoring companies. Commercial banks are the most important suppliers of funds to businesses. Short-term financing can, in some cases, be arranged as a line of credit. Medium and long-term financing is also available. As a condition of these loans, a bank usually requires the executions of notes and formal loan agreements which may restrict the borrower's decision-making powers through special covenants. Personal guarantees and audited financial statements are usually required. Frequently, lenders ask simply for a guarantee from the parent company to grant a loan to a majority-owned subsidiary. Investment bankers are also called on to arrange financing through commercial paper.

Exchange controls have been lifted. Foreign currency transactions are not currently controlled by any authority. Financial Institutions are free to participate in a currency business without the prior official approval of the Central Bank of Venezuela.



Consumer Protection and Special Industries

Intellectual and industrial property rights

The Autonomous Service of Intellectual Property (Spanish: *Servicio Autónomo de la Propiedad Intelectual SAPI*), an agency attached to the Ministry of People's Power of National Commerce, which exercises the competence that corresponds to the Venezuelan State over intellectual property, in matters of Copyright, Trademarks and Patents.

The SAPI was created by Decree No. 1,768 March 25, 1997, published in the Official Gazette No. 36,192 dated 04-24-97; It became operational on May 1, 1998 according to Ministerial Resolution No. 054 of 04-07-1998, published in Official Gazette No. 36,433 dated 04-15-98.

The creation of the SAPI, has allowed to unite under a single organization Industrial Property and Copyright. This merger has made it possible to streamline and optimize the process of registration, protection and dissemination of the creations of the human intellect under the various schemes currently operating in the Venezuelan System of Intellectual Property.

Consumer and user protection

The National Superintendence for the Defense of Socioeconomic Rights of Venezuela (Spanish: *Superintendencia Nacional para la Defensa de los Derechos Socioeconómicos Sundde*) was created to ensure compliance with the Organic Law of Fair Prices, through audits and inspections.

Its functions practice routine inspections or complaints to businesses for the production, importation, distribution, marketing, warehousing, storage, customs enclosures or tanks property owned by companies or individuals. It also sets prices that have nothing to do with the cost of production of the items, so the shortage increases and no one takes its prices into account.

In addition, it has among its powers to notify the Prosecutor's Office of presumptions of illicit. It is dependent on the Ministry of the Popular Power for Commerce National.



Legal Framework for Business

In Venezuela, the standards for the preparation and presentation of financial statements and their notes are known as Generally Accepted Accounting Principles and they have been issued, since 1973, by the Federation of Associations of Public Accountants of Venezuela (Spanish: *Federación de Colegios de Contadores Públicos de Venezuela FCCPV*).

Accounting regulations in VENEZUELA

ADOPTION IN VENEZUELA OF INTERNATIONAL FINANCIAL INFORMATION STANDARDS (IFRS)

The development of the INTERNATIONAL FINANCIAL INFORMATION STANDARDS (IFRS) is due to the need to compare financial information between different countries through the uniformity of accounting standards, since the activities of multinational companies are expanding rapidly day by day.

The preparation and presentation of the Financial Statements under the International Financial Reporting Standards (IFRS) are aimed at satisfying the common needs of a range of users, as they recognize, measure and reveal the financial effects of transactions, offering a true image of the company's performance, allowing a better analysis of the financial statements and an increase in the level of quality of the accounting, in addition, international comparability of the financial information is achieved, which contributes to the internationalization of the capital market and the increase in foreign investment in various countries.

In this sense, the Federation of Colleges of Public Accountants of Venezuela (FCCPV) approved the adoption of the International Financial Reporting Standards issued by the International Accounting Standards Board (IASB, acronym in English) after reviewing and interpreting each one. of them, by the Standing Committee of Accounting Principles (CPPC) and approval in an Expanded National Directory or any competent body for it.

The Generally Accepted Accounting Principles in Venezuela will be identified with the acronym VEN-NIF and the Application Bulletins identified with the acronym BA VEN-NIF, which contain the approved current standards.

Accounts controls in VENEZUELA: Statutory audits

Corporations and partnerships subject to control of some of the respective Superintendence (e.g. publicly traded corporations, entities registered with the Register of Securities, banks, foreign companies, etc) must appoint auditors to annually report on their financial reports.

All other companies are subject to their shareholders or the board of directors requiring audited financial statements.

Content of financial data to be published: Annual accounts

The economic and financial data which companies must make public every year are called the Annual Accounts. The Annual Accounts consist of the following financial statements:

- A statement by the board of directors and the management on the annual report.
- A balance sheet.
- A profit and loss account.
- A cash-flow statement.
- Disclosures, including disclosure of accounting policies.
- A statement of changes in equity as well as a management report.
- An auditors' report (if required).

Very small and medium-sized companies may be exempt from some of the disclosures.

Legal audit limits

Audit is not mandatory in Venezuela.



Forms of Business Organisations

Setting up a VENEZUELA company

The main business structures used in Venezuela are:

Share Capital Corporation (Compañia Anonima . C.A.) (Sociedad Anonima . S.A.)

Limited Liability Partnership (LLP) (Sociedad de Responsabilidad Limitada . S.R.L.)

Limited Liability Co. (LLC) (Compañia en comandita. Simple o por acciones)

General Partnership (Compañía en nombre colectivo)

Partnership

Branch of a Foreign Corporation

Every company must be registered in the Mercantile Register and will be subordinated in the case of financial institutions, to the Superintendence of Banks and Insurance. These institutions control and supervise business operations according to the Venezuelan Law.

Share Capital Corporation (Compañia Anonima . C.A.) (Sociedad Anonima . S.A.)

Liability is guaranteed by a pre-determined share capital.Shareholders are liable up to the amount of their shares. They are share capital corporations.

Limited Liability Partnership (LLP) (Sociedad de Responsabilidad Limitada . S.R.L.)

Liability is guaranteed by a pre-determined capital divided into contributing capital quotas not represented by shares of stock or negotiable papers. This form of association includes principles of share corporations and partnerships. Partners are liable up to the amount of their respective capital contributions. Transfer of participation is subject to unanimous approval of partners.

Limited Liability Co. (LLC) (Compañia en comandita simple o por acciones)

One or more partners are jointly and individually fully liable and liability is limited to a pre-determined amount of one or more partners. Capital may be divided in shares of stock.

General Partnership (Compañía en nombre colectivo)

All partners are jointly and fully liable.

Partnership

Partnerships in Venezuela are civil organizations that usually associate professionals for the purpose of rendering a professional service, such as accountants, lawyers, architects, etc. Partnerships are organized in the same manner as corporations, and may have any number of partners.

Partners are jointly responsible for the partnership's operations and have unlimited personal liability. Except for the recognition of income for tax purposes, in which case partnerships compute using the the accrual method, taxes are paid by each partner individually.

Branch of a Foreign Corporation

A foreign corporation may establish a Venezuelan branch, which has to be incorporated in a similar manner as a domestic corporation. Branches also compute income tax in the same manner as corporations in Venezuela, and are entitled to deduct expenses incurred both abroad and in the country, provided that the adequate supporting documentation is obtained. 15% to 34% and, if adequately supported, are deductible for income tax purposes. The percentage of withholding taxes on payments made abroad may vary depending on the tax treaties entered with different countries.

Governing Documents

The Company Laws contain basic and replaceable rules for the constitution and the internal management of a company. Companies have to be established on the basis of written articles of association covering basics such as the name, the registered office, the corporate purpose, the fiscal year, etc.

Directors

The principal controlling body of a company is the Board of Directors, which is appointed by the shareholders.

Company directors have a statutory obligation to ensure the annual financial report gives a true and fair view of the financial position and performance of the company, and whether the company will be able to pay its debts as and when they become due and payable.

The directors have an obligation to ensure the financial report has been prepared in accordance with Venezuelan accounting standards (VEN NIF). Directors are also responsible for ensuring the company safeguards its assets and maintains a complete and adequate set of accounting records and statutory registers.

Forming a Company

To form a company, you should follow these steps:

- Reserve company name.
- Obtain an approval to the company name.
- Lawyer must be prepare and legalize the company.s constitutive documents and social status.
- Open bank account.
- Register at the local mercantile register (Registro Mercantil).

- Publish articles in a local newspaper (Gaceta Forense del Registro Mercantil).
- Register company books.
- Register at the local Servicio Nacional Integrado de Administracion Aduanera y Tributaria (SENIAT) with to obtain a fiscal number.
- Obtain the clearance certificate at municipal level (Instituto Municipal).
- Register with the Ministery of Labor.
- Go through a labor inspection (by the labor inspectorate).
- Register for social security at a local regional fund.
- Register at the National Institute of Socialist Cooperation and Education.
- Obtain the approval and undergo inspection.
- Obtain conformity of use certificate (zoning permit).
- Obtain industrial or commercial license from competent municipality.
- Register at National Bank for Housing and Habitat . Banco Nacional de Vivienda y Habitat (BANAVIH).

Registration Requirements and Filing Procedures for Public Securities

The Securities National Superintendence (Superintendencia Nacional de Valores . SUNAVAL) is the governmental agency that regulates the offering of securities in Venezuela. One of its primary functions is to assure full and accurate disclosure of financial information with respect to companies whose shares are listed on the Venezuela Stock Exchange (Bolsa de Valores de Caracas . BVC).

The BVC is a private institution, which operates through a concession granted by the Ministry of Finance and Securities National Commission, under the Law of Capitals Market (Ley del Mercado de Capitales).

All companies whose shares are listed on the Stock Exchange are required to file periodic reports with the CNV and publish their financial statements in newspapers of significant circulation. The financial statements of these companies must be audited annually and reviewed by independent public accountants.

Shareholdings by Non-residents and Foreign Companies

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. Besides, the State may reserve for itself the right to exploit certain industries or public services, such as, the Oil and Gas industry. 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 that the foreign investor is entitled to exercise over the technical, financial, administrative and commercial management of the company:

(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).

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.

Usually, 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.

However, foreign investors should register their investment with the Foreign Investment Superintendence (SIEX, from its Spanish acronym). This register is a compulsory requirement for eventual repatriation of capital and dividend remittance abroad possible.



Taxation

The VENEZUELA tax system

- Venezuelan resident or domiciled companies are subject to profit tax only on their worldwide income whereas non-residents are subject to tax on their Venezuelan source income even when they do not have a permanent establishment or a fixed base in Venezuela.
- There is a progressive system of corporation tax rates which applies to income and capital gains.
- VAT is payable on imports and the supply of goods and services. The standard rate is 16%.
- Regarding VAT, a new “additional tax rate” or surcharge tax ranging from 5% to 25% is applicable to the payment of goods and services in foreign currencies or in cryptocurrencies different from those backed by the government. The surcharge tax entered into force on 28 February 2020.
- Withholding taxes apply to the payment to residents and non-residents of interest and royalties. Dividends are also subject to withholding tax when they represent profits not already charged to corporation tax. A similar principle applies to branch profits repatriated from Venezuela to an overseas territory.
- Credit is available for overseas tax paid on foreign income against Venezuelan tax payable on the same income.
- A wealth tax was introduced in August 2019 and will apply to individuals and legal entities, designated as “special taxpayers” by the tax authorities, which own or possess wealth with a value exceeding 150 million tax units (TUs).
- Resident individuals are subject to income tax on their worldwide income. Non-residents are taxable on their Venezuelan source income.
- Tax on large financial transactions at a rate of 2%. This tax has come into effect on 8 November 2018 (“Law of Tax on Large Financial Transactions”).
- In August 2018, the Venezuelan government announced a monetary reconversion which created a new currency, the Sovereign Bolivar (VES), which gradually replaces from 20 August 2018 the previous currency (VEF) at a conversion rate of VES 1 to VEF 100,000. Entities need to adapt their systems and processes to the new currency.

Corporate Tax

Venezuelan resident or domiciled companies are subject to profit tax on their worldwide income. Non-resident or non-domiciled companies are subject to corporation tax only on Venezuelan-sourced income even when they do not have a permanent establishment or a fixed base in Venezuela. Foreign resident or domiciled companies who have a permanent establishment or fixed base in the country will exclusively pay taxes on the income of national or foreign source attributable to this permanent establishment or fixed base.

Tax is imposed on a current year basis. The tax year adopted is generally that specified in a company's statutory documents with the standard year being a calendar year. However, it should be noted that other periods are also allowed, including periods of 12 months or less. Final tax is payable when lodging the final corporation tax return, usually required within three months of the end of the accounting period. The taxable income is expressed in tax units. The tax unit (unidad tributaria, TU) is a tax adjustment index. Its value is adjusted annually by the tax authorities in accordance with inflation and amounts to VEF 1500 (gazetted on 13 March 2020 (Official Gazette No. 41,839); the new TU value applies as from its publication in the Official Gazette). The corporate income tax rates are as follows:

Taxable income (Tributary Unit - TU)	Rate (%)
0 to 2,000	15
2,001 to 3,000	22
Over 3,001	34

Income from banking activities, financial, insurance and reinsurance are taxed at a fixed rate of 40%.

Capital Gains Tax

There is no separate or distinct tax on capital gains. However, capital gains and/or losses from the sale of assets belonging to companies that are situated in Venezuela are included in the calculation of the income for the purposes of determining the tax liability of companies (income tax). Under the law, a flat tax of 34% is established for dividends arising from the excess of the dividend payer's net income (on which dividends were declared) over its taxable net income (taxed fiscal net income). Dividends received from companies incorporated and domiciled abroad or incorporated abroad and domiciled in Venezuela are excluded from net income as contemplated in the law but tax paid on such dividends may be applied outside Venezuelan territory.

There is no tax on earnings of branch offices in Venezuela. Venezuelan branches of foreign companies are taxed in Venezuela for income obtained in the country pursuant to corporate tax. According to the income tax law, companies or community estates established abroad and domiciled in Venezuela or established and domiciled abroad, which have a permanent establishment in Venezuela, are liable for paying a tax of 34% on any excess of the net income of the permanent establishment that is neither exempt nor exonerated over its taxed fiscal net income for the fiscal year on behalf of their partners, shareholders or joint owners. This presumed dividend does not apply in cases where the branch can prove to the Tax Administration's satisfaction that it reinvested the full amount of the difference between its net income and its taxed fiscal net income in the country. The reinvestment must remain in the country for at least five years.

Value Added Tax (VAT)

VAT is applicable to the sales, transmission or transfer of chattels, the rendering of services and the importation of goods, as specified in the law, and is applicable throughout the entire Venezuelan territory (the Free Port of the State of Nueva Esparta, Paraguana Peninsula in the State of Falcon and in the Cultural

Scientific and Technological Tax-Free zone in the State of Merida, will be exempt from VAT). It will be paid by individuals and corporations, unincorporated or de facto companies, joint ventures and other public or private legal or economic entities, in their capacity as importers of goods, habitual or not. It will also be paid by manufacturers, producers, assembly plants, independent merchants and service providers, who engage in activities that are defined by the law as taxable acts. Certain imports of goods and services are exempt from tax. Exporters who are regular taxpayers are entitled to recover the tax paid upon the purchase of tangible chattels or receipt of services related to their export activities. This also applies in the case of chattels imported for export.

The VAT amount accruing is determined by taxation periods of one calendar month, subtracting the aggregate tax credit amounts from the respective aggregate tax debit amount. The result is the VAT to be paid. The standard rate, currently 16%, is charged on the net price of the transaction.

Temporary Advance Payment Scheme of Income Tax Applicable to special taxpayers

General aspects	Income tax
Scope	Applicable to special taxpayers engaged in economic activities other than mine development, hydrocarbon exploitation and related activities and who do not receive royalties from those activities.
Who is exempted from making advance payments?	Individuals under employment, classified as special taxpayers.
Advance payment's taxable base	Calculated based on gross income obtained during the previous taxable period in relation to Value Added Tax, multiplied by a set percentage.
Applicable tax rate	• Two percent (2%) for financial entities, banking and insurance and reinsurance sectors; One percent (1%) for other taxpayers.
Tax return and payment	Advance payments will apply to daily gross income received by taxpayers, which shall be reported and paid on a fortnightly basis. However, payment and reporting conditions shall be determined by the Tax Authorities by way of general administrative rulings
Taxable period	• For special taxpayers, fortnightly periods; • For financial entities, banking, and insurance and reinsurance sectors: daily periods. Note: Until the Administrative Ruling is issued
ANC's Decree enforceability	This Decree corresponds to a temporary scheme and shall stay in force until it is totally or partially overturned by the Executive Branch. The Decree shall come into force as from 1 September 2020.

Tax on Large Financial Transactions

The Law of Tax on Large Financial Transactions has come into effect from 1 February 2016. Starting from 8 November 2018 the tax rate is 2 % and it is paid by legal and economic entities without legal entity status qualified as special taxpayers by the Tax Administration. This tax is applied on debits in bank accounts or against custody deposits or any other kind of deposits, debits in liquid funds, trust assets and other financial market funds or any other financial instrument, made in banks and other financial institutions. The Tax on Large Financial Transactions is not deductible from Income Tax.

Large Patrimony Tax

The Constitutional Law of Great Patrimony Tax approved by the National Constituent Assembly introduced a tax on the net worth of special taxpayers, natural or legal persons, when it is equal to or greater than 150 million Tax Units (UT). The tax rate will range from a minimum limit of 0.25% to a maximum of 1.50%. The Tax will be levied annually on the Net Equity as of September 30 of each year. The Tax Rate applicable from the entry into force of the Law on 30 September 2019 is 0.25%.

Fringe Benefits Tax (FBT)

There is no tax payable by the company on fringe benefits. Instead, any benefits provided to an employee are included in their personal income and are subject to tax.

Local Taxes

There is only a municipal tax that is assessed on gross income from commercial industrial activities at different percentages, depending on the business activities conducted and the geographic jurisdiction in which the company is located.

Other Taxes

Custom Duties

This involves paying tax on goods that are imported in accordance with the customs tariff which is calculated based on the cost, insurance and freight (CIF) value.

Stamp Duty

This is applied on certain transactions including transfer of ownership, formation of companies and a wide range of legal transactions and operations.

Public Registry

These are duties that are incurred for the registration and certification of authenticity of various documents in the Main and Subsidiary Registry Offices of each geographic jurisdiction in which the operation is conducted.

Mandatory Social Security (MSS)

These are payments that are made monthly by employers and employees on the payroll of companies for the purpose of guaranteeing the functioning of the national worker social security system.

Law for providing Housing and Habitat

Companies must contribute to the obligatory savings fund with 2% monthly of workers payroll. Workers' contribution shall be 1% of their salary. The savings fund must finance housing programs for the workers.

National Institute of Educational Co-operation (NIEC)

Employers must contribute to this Institute on a quarterly basis at the rate of 2% of the total wages and compensation paid to their workers. Workers must contribute 0.5% of the profits paid to them by the employer at the end of the corporate business year. These contributions are for the purpose of professional training of workers and young apprentices, and tackling national illiteracy.

Inheritance and Gift Taxes

This is assessed on gratuitous transfers of rights *causa mortis* or *inter vivos*.

Organic Law on Science, Technology and Innovation (LOCTI)

This Law establishes several contributions that companies must make according to the activities they engage in, as follows:

(a) Hydrocarbon companies, 2% of annual gross revenue;

(b) Companies in mining and electrical power activities, 1% of annual gross revenue;

(c) Companies engaged in other production sectors of goods and services must contribute annually the equivalent of 0.5% of gross income.

The highest percentage will apply to any company which performs several activities and may as a consequence fall into more than one category above. The Law establishes that such contributions may be made in research developed in the same companies or into Government dependent Funds.

Organic Law on Drugs

This Law establishes a contribution of 1% of annual net income of companies employing 50 or more workers. This contribution must be invested in programs for the prevention of drug traffic and consumption within the same company for its workers and their family environment. Likewise, the Law establishes that 2% of their annual net income must be contributed by companies manufacturing or importing alcoholic beverages, tobacco and its mixtures, like chewing tobacco, to maintain and operate prevention and rehabilitation centres for consumers of these substances.

Organic Law on Telecommunications

In the Organic Law of Telecommunications, various taxes and duties are set forth on companies engaging in the business of telecommunications and making use of radio-electric spectrum, sound broadcasting and open television, among others. The various taxes and duties they must pay range between 0.05% and 2.3% of their annual gross revenue.

Organic Law on Tourism

The Organic Law on Tourism sets forth a contribution of 1% monthly on gross revenue obtained, that must be paid by those rendering tourist services.

Organic Law on Sport, Physical Activity and physical Education

The law establishing the National Fund for the Development of Sport, Physical Activity and Physical Education will be constituted by contributions made by companies or other public and private organisations engaged in economic activities in the country for profit. The fund will be used to finance plans, projects and programs for the development and promotion of sport and physical activity, and social security and athletes. The contribution by companies or other organisations will be 1% of the net profit or annual accounting profit when the profit exceeds TU 20,000.

Constitution Law on the Tax Regime for the Sovereign development of the Mining Arc

On 29 December 2017, the Constitution Law on the Tax Regime for the Sovereign Development of the Mining Arc was published, the purpose of which is the creation of a special tax regime in the field of Income Tax. The tax rate to be applied will be set by the President of the Republic and will depend on the capacity of production and/or processing of the gold of each subject.

Determination of Taxable Income

Taxable net income is calculated by deducting the allowable costs and deductions (prescribed under the law) from gross taxable income.

Investment Allowance

The benefits of tax investment abatements were eliminated in the Reform of the Income Tax Law 2015 that came into effect on 31 December 2015.

Depreciation

The amount allowed as deduction for depreciation during the tax year is the percentage necessary to recover the cost of such assets during the time that they are available to be used in production. Depreciation may be increased by adjusting depreciable fixed assets for inflation. Only the straight-line or the production unit method is admitted. The Tax Administration may admit other methods. Accelerated depreciation of assets is not admitted.

Stock / Inventory

Taxpayers shall draw up an inventory of all goods intended for sale at the start of their activities and at the close of each tax year. The inventoried goods shall be appraised at the cost price. They can also be appraised at the wholesale market price when the latter is less than the cost price.

Dividends

From 1 January 2001, net income from dividends is considered to be a portion of income from dividends paid or credited to account, in cash or in kind, and arising from net income that is neither exempt nor exonerated, that exceeds the taxed fiscal net income, and accordingly, has not been subject to income tax. Dividend income is taxed at the rate of 34% of the amount paid. The full amount of the tax must be withheld at the time of payment or credit to account. Tax on dividends from companies in the oil and mining industry are taxed at the rate of 67.7% and 60% respectively and tax is to be withheld in full at source.

Dividends received from companies incorporated and domiciled abroad or incorporated abroad and domiciled in Venezuela are excluded from net income but tax paid on such dividends may be applied outside Venezuelan territory.

Interest Deductions

Interest on capital borrowed and invested in income-producing activity is deductible. In case of interest paid to companies abroad, withholding tax will be levied at the following rates:

Beneficiary	Rate (%)
Financial Institutions (domiciled)	5.00
Financial Institutions (non-domiciled)	4.95
Parent Company	5.00
Legal entity other than the above	32.30

Losses

Operating losses can be used for three consecutive periods from the fiscal year in which they occur but only in a proportion of 25% of the total taxable income of each successive period.

Foreign Sourced Income

The current Income Tax Law established the obligation for residents of Venezuela and for companies domiciled in the country to pay income tax on all revenue obtained, whether in Venezuela or abroad.

Incentives

Customs Duties paid on imports of goods and products used in the production of goods for export would be reimbursed by the Banco Central de Venezuela (BCV).

Regular Adjustment for Inflation

The income tax law considers the regular adjustment for inflation, which represents the greater or lesser value of the net worth obtained by recognising the effects of the inflation in non-monetary assets and liabilities through the application of Consumer General Price Index, based on procedures established in the Venezuelan tax legislation. The fiscal adjustment for inflation, thus calculated, is considered a taxable gain or a deductible loss in determining the income tax expense. According to the reform of the Income Tax Law 2015 (published on 30 December 2015 and effective for periods beginning on 1 January 2016), the financial entities, the insurance and reinsurance activities, and taxpayers qualified as special by the tax administration are excluded from having to make a regular adjustment for inflation.

Foreign Tax Relief

Venezuela has signed a number of agreements in order to avoid double taxation and in relation to shipping and air transportation (see hereafter under Treaty and non-treaty withholding rates).

Corporate Groups

There is no provision for consolidated tax returns.

Related Party Transactions

In cases involving commercial transactions between companies that could be considered related, they must follow the prescribed methodology regarding transfer pricing to determine their income. The rules on transfer pricing stipulate that application thereof is mandatory in the case of operations between related parties. The law also determines when a relationship shall be deemed to exist, and therefore, when the transaction is between related parties.

Withholding Tax

In case of withholding tax retained from payments to domiciled entities, the Tax Administration considers it to be a tax advance, which may be deducted from the income tax determined in the fiscal year in which it is declared.

Exchange Control

Exchange control were repealed. Foreign currency transactions are not currently controlled by any authority. Financial Institutions are free to participate in a currency business without the prior official approval of the Central Bank of Venezuela.

Personal Income Tax

Tax on individuals is levied on revenue received annually, provided that such revenue exceeds TU 1,500. They are allowed personal abatements and abatements for family charges, as well as personal expenses incurred during the fiscal year, e.g. medical expenses, school payment, insurance policies, etc.

The personal income tax rates are as follows:

Taxable income (Tributary unit)	Rate (%)
0 to 1,000	6
1,001 to 1,500	9
1,501 to 2,000	12
2,001 to 2,500	16
2,501 to 3,000	20
3,001 to 4,000	24
4,001 to 6,000	29
Over 6,001	34

Treaty and non-treaty withholding tax rates

	Dividends(%)	Interest(%)	Royalties (%)
Domestic rates			
Companies	0/34	4.95/3414	15/34[1]
Individuals	0/34	34[15]	34[15]
Treaty countries:			
Austria	5/15[2]	0/4.95/10[16, 17]	5
Barbados	5/10[3]	5/15[17]	10
Belarus	5/15[4]	5	5/10[19]
Belgium	5/15[4]	0/10[18]	5
Brazil	10/15[5]	15	15
Canada	10/15[4]	10	5/10[19]
China	5/10[6]	5/10[17]	10
Cuba	10/15[4]	0/10[16]	5
Czech Republic	5/10[2]	0/10[16]	12
Denmark	5/15[4]	0/5[16]	5/10[20]
France	0/5/15[7]	0/5[16]	5

	Dividends(%)	Interest(%)	Royalties (%)
Germany	5/15[2]	5	5
Indonesia	10/15[6]	0/10[16]	10/20[20]
Iran	5/10[2]	0/5[17]	5
Italy	10	0/10[16]	7/10[21]
Korea	5/10[6]	5/10	5/10[22]
Kuwait	5/10[6]	5	20
Malaysia	5/10[6]	15	10
Netherlands	0/10[4]	0/5[16]	5/7/10[23]
Norway	5/10[6]	0/5/15[16, 17]	9/12[20]
Portugal	10	0/10[16]	10/12[20]
Qatar	5/10[6]	0/5[16]	5
Russia	10/15[8]	5/10[17]	10/15[20]
Saudi Arabia	5	5	8
Spain	0/10[4]	4.95/10[17]	5
Sweden	5/10[9]	0/10[16]	7/10[24]
Switzerland	0/10[4]	0/5[16]	5
Trinidad and Tobago	5/10[4]	0/15[16]	10
United Arab Emirates	0/5/10[10]	0/10[16]	10[25]
United Kingdom	0/10[11]	0/5[16]	5/7[26]
United States	5/15[12]	4.95/10[16, 17]	5/10[24]
Vietnam	5/10[13]	0/10[16]	10[25]

NOTES:

1. Taxed at progressive rates (see higher, under 'Company tax') on 90% of the gross payment.
2. The lower rate applies to direct participations of at least 15% of capital.
3. The lower rate applies to direct participations of at least 5% of capital.
4. The lower rate applies to direct or indirect participations of at least 25% of capital or voting power (depending on the treaty).
5. The lower rate applies to participations (direct or indirect) of at least 20% of capital.
6. The lower rate applies to direct participations of at least 10% of capital.
7. The 0% rate applies when the beneficial owner is a company that holds at least 10% of the capital of the company paying the dividends. The 5% rate applies in all other cases. The 15% rate applies if the beneficiary of the dividends is a resident of Venezuela that receives from a company resident in France dividends that would give rise to a tax credit (avoir fiscal). For dividends received by a resident of France, the recipient has a right to a payment from the French Treasury for an amount equal to the avoir fiscal.
8. The lower rate applies to direct participations of at least 10% of capital and an investment of at least USD 100,000.
9. The lower rate applies to Venezuelan companies holding at least a 25% direct participation in the capital of a Swedish company.

10. The 0% rate applies to dividends paid to government institutions and state-owned entities. The 5% rate applies to direct participations of at least 10% of capital. The 10% applies in other cases.
11. The 0% rate applies to direct or indirect participations of at least 10% of voting power.
12. The lower rate applies to participations of at least 10% of the voting stock.
13. The lower rate applies to direct participations of at least 10% of capital.
14. Taxed at progressive rates (see higher, under 'Company tax') on 95% of the gross amount, provided that the loan is invested in the production of income in Venezuela, if not the rates apply to 100% of the gross amount.
15. Interest paid to non-resident individuals is subject to a 34% withholding tax on 95% of the gross amount, provided that the loan is invested in the production of income in Venezuela, if not the rate applies to 100% of the gross amount. Royalties paid to non-resident individuals are subject to a 34% withholding tax on 90% of the gross amount.
16. The 0% rate applies, inter alia, to interest paid by public bodies.
17. The lower rate applies to interest paid to banks or financial institutions.
18. The 0% rate applies, inter alia, to interest on deposits (not represented by bearer instruments) with a bank and interest on commercial debt-claims (including debt-claims represented by commercial paper) resulting from deferred payments for goods, merchandise or services supplied by an enterprise.
19. The lower rate applies to royalties paid in respect of computer software or any patent or information concerning industrial, commercial or scientific experience.
20. The lower rate applies to payments for technical assistance.
21. The lower rate applies to copyright royalties (including films and tapes for radio and television broadcast).
22. The lower rate applies to royalties for the use of, or the right to use, any industrial, commercial or scientific equipment.
23. The 5% rate applies to royalties for patents, leasing of equipment and know-how while the 7% rate applies to trademark royalties and the 10% rate to copyright royalties (including films and tapes for radio and television broadcast).
24. The 10% rate applies to copyright royalties (including films and tapes).
25. The rate also applies to payments for technical assistance.
26. The 5% rate applies to patents, trademarks and know-how royalties while the 7% rate applies to copyright royalties (including films and tapes for radio and television broadcast).



Labor Law

An outline of employment law

The fundamental law governing this area is the Workers Organic Labor Law (LOTTT from its Spanish acronym), Presidential Decree No. 8,938, Published in the Extraordinary Official Gazette No. 6,076 dated May 7, 2012, which sets out the respective rights of employees and employers, the general terms and conditions of employment, the procedures to be followed when dismissing personnel, and the rules for collective bargaining, amongst others.

Recruitment

There are basically two types of employment contract; Permanent and Temporary:

- Temporary contracts require a legal justification for its limited duration.
- Permanent contracts are encouraged by government through benefits.
- Part-time contract.
- Training contracts: internships and apprenticeships.

Standard regulations for employment contracts

Probation period

Any of the foregoing contracts may establish a trial period, during which either party may terminate the contract without being required to justify the decision.

Working hours

As a rule, the maximum working hours are 40 hours per week. Agreements may be reached as to how the working hours are distributed throughout the year, which may follow an irregular pattern according to the collective agreement. Overtime is permitted, but only up to 100 hours per year. It is obligatory to allow employees at least one and a half days off per week.

Wages and salaries

These are regulated by Workers Statute, the collective agreements and are also agreed individually by contract between the parties.

Visas and work and residence permits

Visas

Immigration and visa requirements in Venezuela are subject to Migration and Immigration Law and to regulations from the Administrative Service for Identification, Migration and Immigration (SAIME, from its Spanish acronym). Venezuelan authorities can issue several kinds of visa, but only two are relevant to business: Labor Visa (*visa de transeunte laboral*) and Business Visa (*visa de transeunte de negocios*). In addition, citizens from certain countries may not require a Visa for visiting Venezuela as tourists.

The Business Visa is granted to merchants, executive employees, industry or corporate representatives and micro-entrepreneurs, no migrants, who wish to enter the country in order to carry out activities and/or commercial transactions, mercantile, financial or other lucrative activity related with his or her business.

It is obtained directly by the person before the Venezuelan Consulate in his or her 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.

The Labor Visa is the visa with which anyone can 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 Venezuela before obtaining the visa, the employee shall enter in Venezuela with the Business Visa (visa de transeunte de negocios). Once the Labor Visa is authorized, the employee shall get it at the Venezuelan Consulate in his country of origin or residence.

The Business Visa is obtained directly by the person before the Venezuelan Consulate in his or her 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.

In regard with the Labor Visa, it is advisable to obtain it before the employee enters Venezuela. Once the Labor Visa is authorized, the employee shall get it at the Venezuelan Consulate in his country of origin or residence. The procedure to obtain the authorization to enter the country and the labor permission of the employee may take from three (3) to four (4) months. It is granted for one year and the holder is can bring his family to Venezuela with a Family Visa (*visa de transeunte familiar*).

Work and residence permits

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. Besides, a work contract is needed in order to obtain the Labor Visa.

The contract must describe the position or the specific job that will be accomplished, the remuneration and the duration of the employment. The contract must be with a company properly incorporated in Venezuela or a branch duly registered in the country.

Foreign employees must have a work permit and a work visa. If the investor will only make business in the country, he will need a business visa, but no work permit will be necessary. Labor permits are granted for one year by the Ministry of the Popular Power for Labor and Social Security.

Social Security

Social Security is a public institution in Venezuela dedicated to the protection of Social Security for all its working beneficiaries. The Institute is responsible for applying the Social Security System throughout the national territory. Its primary mission is to take care of maternity care, old age, survival, illness, accidents, disability, death, retirement and unemployment or forced unemployment.

Compulsory social security contributions will be made weekly and will be determined based on the amount based on the salary base earned by the insured in said period.

On the other hand, it will also be necessary to take into account the type of regime applied in each area as well as the risk that is assigned to both the companies and the specific group of workers.

This means that we will find two main classifications. On the one hand we have the partial regime that will quote in a certain way according to the modality, and secondly we have the general regime where we will find three scales that cover the minimum risk, medium risk, and the maximum risk for the most dangerous. According to current regulations, those companies with at least 1 worker must register and contribute to the social security system.

The company must comply monthly with the Obligatory Social Security (SSO, from its Spanish acronym) and Forced Unemployment Insurance (SPF, from its Spanish acronym) contributions. In both cases, the employer contributes the equivalent of a percentage of the salary and effectively withholds another (lower) percentage from the worker, as detailed below.

Finally, it remains for us to list that the beneficiaries of the compulsory social security will attend to the contingency and the right and will extend to the insured and to the relatives who have been qualified. Foreigners residing in Venezuela have the same rights as Venezuelans in terms of social security.

Payment of Social Security contributions is made by the employer on a monthly basis based on the worker's salary as established in the General Regulations of the Social Security Law. The contribution that the company must make varies between 9% and 11% of salary depending on the risk classification of the company. The contribution that is withheld from the worker is equivalent to 4% of her salary. In both cases the calculation is weekly.

Prevention of occupational hazards

The LOPCYMAT is the Organic Law of Prevention, Conditions and Work Environment. The object of said law is:

- Establish the institutions, norms and guidelines regarding health and safety,
- Regulate rights and duties of workers and employers, and
- Establish sanctions for non-compliance with this regulation.

The National Institute for Occupational Prevention, Health and Safety (INPSASEL, from its Spanish acronym), is an autonomous body attached to the Ministry of Labor, created in accordance with the provisions of the Organic Law on Prevention, Conditions and Work Environment (LOPCYMAT, from its Spanish acronym).



E-business Legal Framework

Civil and commercial regulations

Constitution of the Bolivarian Republic of Venezuela

Establishes rights and guarantees that allow the development of free enterprise, privacy in communications and personal data.

Commercial Code

It is applied to electronic commerce; it is based on commercial uses and customs in order to maintain commercial dynamism.

Civil Code

Vicariously supports business operations, especially in the application of rules on the existence, validity and termination of obligations and all matters relating to contracts in general.

Law on Data Messages and Electronic Signatures

It gives legal value to the Electronic Signature, the Data Message and all intelligible information in electronic format, regulates matters relating to the Certification Service Providers and Electronic Certificates.

Penal Code

Criminalizes offenses and ordinary offenses by electronic data transmission, as well as property crimes such as fraud and scams.

Law on Computer Crimes

It is a criminal law that aims to protect systems that use information technology.

Consumer Protection Law

It directly regulates in one of its chapters all commercial transactions that are executed through information technologies.

Law to Promote and Protect Free Competition

Electronic commerce operations between competing merchants can generate infringements of the rules included in this law, such as unfair competition, abuse of dominance position, price cartelization and other series of conducts aimed at hindering the entry or permanence of competitors within the market.

Intellectual and industrial property rights

The Autonomous Service of Intellectual Property (Spanish: *Servicio Autónomo de la Propiedad Intelectual SAPI*), an agency attached to the Ministry of People's Power of National Commerce, which exercises the competence that corresponds to the Venezuelan State over intellectual property, in matters of Copyright, Trademarks and Patents.

The SAPI was created by Decree No. 1,768 March 25, 1997, published in the Official Gazette No. 36,192 dated 04-24-97; It became operational on May 1, 1998 according to Ministerial Resolution No. 054 of 04-07-1998, published in Official Gazette No. 36,433 dated 04-15-98.

The creation of the SAPI, has allowed to unite under a single organization Industrial Property and Copyright. This merger has made it possible to streamline and optimize the process of registration, protection and dissemination of the creations of the human intellect under the various schemes currently operating in the Venezuelan System of Intellectual Property.

Appendix

Reference web sites

Federation of Associations of Public Accountants of Venezuela	www.fccpv.org
Central Bank of Venezuela	www.bcv.org.ve
Venezuelan Institute of Social Security	www.ivss.gov.ve/
National Institute for Socialist Training and Education	www.inces.gob.ve
Ministry of the Popular Power for Social Work process	www.mpppst.gob.ve
Ministry of the Popular Power of economics, finance and foreign trade	www.mppef.gob.ve
National Superintendence for the Defense of Socioeconomic Rights of Venezuela (Sundde)	www.sundde.gob.ve
Superintendency of Foreign Investment (Siex)	www.mppef.gob.ve
Ministry for Foreign Trade and International Investment	www.minci.gob.ve
Autonomous Service of Intellectual Property (Sapi)	www.sapi.gob.ve
Caracas Stock Exchange	www.bolsadecaracas.com
Ministry of the Popular Power for Foreign Affairs	mppre.gob.ve
TMF-GROUP	www.tmf-group.com
tuabogado.com	www.tuabogado.com
Wikipedia	es.wikipedia.org

right people
right size
right solutions

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