

International taxes

PwC Venezuela

*Bilateral treaties for the
reciprocal promotion and
protection of investments*

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Venezuela has traditionally been a receptor of international investments; in this regard, the legislation has set forth various international principles and standards relating protection and promotion of investments. Hence, the Constitution of the Bolivarian Republic of Venezuela, the Decree with Force and Status of Law on de Promotion and Protection of Investments; and the Regulations on the Common Regimen for the Treatment of Foreign Capitals as well as Trademarks, Patents, Licenses and Royalties approved by Decisions N° 291 and 292 of the Cartagena Agreement Commission (Regulatory Decree 2095), stipulate juridical guarantees for foreign investors. Nevertheless, the pillar of a protection system for these kinds of investments is constituted by the various treaties and agreements entered into between the Venezuelan Government and other States, better known as Treaties for the Reciprocal Promotion and Protection of Investments.

Currently, Venezuela has entered into approximately 25 Treaties for the Reciprocal Promotion and Protection of Investments, including:

Treaties for Promotion and Protection entered into by Venezuela		
Germany	Argentina	Barbados
Belgium - Luxembourg	Brazil	Chile
Canada	Costa Rica	Cuba
Denmark	Ecuador	Spain
France	Great Britain	Lithuania
Iran	Netherlands	Paraguay
Peru	Portugal	Czech Republic
Switzerland	Sweden	Uruguay

Now then, although these treaties are transacted on an individual basis between the Contracting States involving each particular case, they generally present the same structure, which includes the following:

Preamble or Declaration of purpose

This section states the will of the contracting parties to reciprocally promote and protect investments, as well as their intention to create and maintain favorable conditions for investments made by one of the Parties in the territory of the Other Party

Definitions

They include accurate explications of fundamental terms of the matter subject to regulation. Hence, these treaties include definitions such as Investment, Investor and Territory.

Scope of application

Each agreement specifies its effective period as well as the extent of their protection to periods following such term. However, every treaty stipulates its inapplicability when there are controversies or claims emerging prior to its effective period.

Promotion and admission

The Treaties set forth a reciprocal undertaking to promote and admit investments of nationals from the other Contracting State and cooperate with their materialization. A constant in all agreements of this kind, is the explicit declaration that the acceptance of the investments will be made in accordance with the laws and regulations of the Recipient Contracting State.

Protection and treatment applicable to investments - governing principles

A fair and equitable treatment implies that Contracting Parties undertake not to apply arbitrary or discriminatory measures against investors from the other State that may prevent them from maintaining, managing and employing their investments, among other things.

Treatment to Most Favored Nations. This implies that Contracting States may not provide a less favorable treatment than that provided to their own national investors or investors from non-contracting States. For many authors, this clause implies the Multilateralization of these agreements, given that even if each agreement is negotiated separately, and poses their own characteristics, whenever this clause is present, the investor may take the most favorable aspect of any agreement of this kind entered into by the State receiving the investment.

Transfer abroad of payments associated with an investment

Also known as the right to repatriation and it constitutes the right of the investor to transfer abroad, without any delay, in currency of free convertibility, payments associated with investments such as principals, dividends, profits, royalties and loan amortizations. The country receiving the investments must respect the economic benefit, translated into concrete and comprehensive gains, obtained by the investor.

Under these Conventions, investors must abide by the legislation and regulations of the country receiving the investment, without being deprived from their right to the remittance of their funds.

Expropriation

Only expropriations for reasons of public interest are allowed, and they must meet certain characteristics, such as not being discriminatory and giving rise to an effective and adequate compensation.

This compensation is to be equivalent to the arm's length (market) value of the expropriated investment at the time of executing the measure, in which the expropriation is publicly notified. In any case, the indemnity shall include interest at a fair business rate, the payment of which is to be made without delay, effectively realizable and freely transferable.

Indemnity for losses

Normally, in entering into these agreements, the Parties undertake to grant to the investors of a Contracting State a treatment that may not be less favorable than that granted to the nationals or to investors of any other State, when as a consequence of a war, armed conflict, revolution, national emergency, insurrections or public disorder, they suffer losses associated with their investment.

Subrogation

Under this Clause, Contracting States, as well as duly authorized Public or private Legal Entities of these Contracting States, indemnify investors of their country, by virtue of a guarantee to cover non-business risks regarding investment in the territory of the other Party. This latter Party is to recognize the subrogation of the other or the legal entity in question in all the rights corresponding to the investor.

Solution of controversies between investors and the Contracting State receiving the Investment

This is one of the most fundamental elements of the Treaties for the reciprocal Protection of Investments, given that without this clause investors affected by the Receiving State, could only submit their claims to the Courts of that State, which normally makes investors reluctant.

According to most treaties entered into, the solution of controversies between Contracting Parties is to be pursued to the extent possible, through diplomatic means. Otherwise, differences are to be submitted to an Arbitral Court. The terms of arbitration a dispute is to be submitted to are similar in all treaties,. This is evidenced by the fact that in most treaties are (one way or another) remitted to the International Center for Settlement of Investment Disputes (ICSID).

Nonetheless, there is the possibility of appealing before other arbitration mechanisms such as the UNCITRAL (United Nations Commission on International Trade Law) or to a supplementary mechanism for the Administration of Reconciliation Procedures, Arbitration and Verification of Facts by the Secretary's Office of the ICSID. In certain cases this possibility is an alternative and in others is a supplementary option; that is, in the event that it is not possible to resort to a given mechanism, the other one can be applied.

The Arbitration Award is limited to determining whether the respecting Contracting State has violated the Treaty; whether such non-compliance has created damages to the investor; and (in such case) it includes fixing the amount of indemnity that the State should pay to the investor for damages caused.

The Arbitration Award shall be conclusive and binding for the Parties to the Controversy. This is important, given that investors are guaranteed the recognition that each State member of the respective Treaty is to give to the Arbitration Award solving the controversy.

Withdrawal of venezuela from the icsid

On February 24, 2012, the Bolivarian Republic of Venezuela formalized its resignation from the Convention on the Settlement of Differences Associated with Investments between States and Nationals of Other States (the ICSID Convention), through a letter addressed to the World Bank,

On the other hand, pursuant to that stipulated in Article 71 of the ICSID Convention, the resignation will be effective once a period of six months has elapsed after receipt of notice; i.e. as of July 25, 2012.

Most Conventions for the reciprocal Promotion and Protection of investments entered into by the Bolivarian republic of Venezuela with other countries choose the ICSID as an international arbitration entity for the resolution of controversies, alternatively, many of these conventions provide the possibility of requesting arbitration from other international entities, which constitute the means to be chosen in event of disputes that cannot be solved in agreement by the parties.

In this regard, it is important to point out that in accordance with that set forth in Article 72 of the ICSID Convention, resigning from the ICSID Convention does not affect pending arbitration proceedings or those that may be initiated with regards events occurred up to six months after the date thereof.

The Bolivarian Republic of Venezuela has entered into Conventions for the reciprocal Promotion and Protection of investments with 25 countries, those which include the ICSID as an arbitration entity will be affected by the aforementioned resignation.

Our Services in International Taxes

- Evaluation and analysis of the principal fiscal effects that originate transactions with foreign entities.
- Tributary advising relative to processes of corporate international restructuring.
- Fiscal advising for the application of agreements to avoid the double taxation signed by Venezuela with other countries.

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Our personnel of Fiscal Advising is highly qualified to offer to him the assistance that you could need.

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