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8 TRENDS IN THE LEGAL ENVIRONMENT IN VENEZUELA

Carlos Garcia Soto
Partner

From the monitoring of the 2021 and 2022 legal environment, we have identified 8 trends that provide us with a glimpse of some of the changes in the Venezuelan legal environment. The following is a brief summary of these specific trends, useful for understanding the current Venezuelan business context.

1. *Ending of the State of Emergency Decrees*

Since 2016 and 2020, Venezuela's President issued State of Emergency Decrees in relation to economic and health matters respectively, through which he took extraordinary measures in these affairs. Since 2021, no further State of Emergency Decree has been issued again, without any particular official announcement being made on these regards. Ever since February 2021, the Economic Emergency Decrees were not further extended, which coincided with the beginning of the constitutional period of the National Assembly. The National Executive thus renounced to exercise powers from Decrees of State of Exception once installed the National Assembly.

2. *Absence of an enabling law in favour of the President*

On the other hand, the President of the Republic has not requested an enabling law in his favor in order to rule and issue decree-laws. In Venezuela, the President has had enabling laws in his favor for long periods, as happened, for example, between 2007 and 2008; 2010 and 2012; 2013 and 2014, and 2015. Therefore, the national legislative power remains so far in the hands of the National Assembly.

3. *Softening of the exchange rate regime*

Since 2003, an exchange rate regime has been enforced in Venezuela which has limited foreign currency contracting freedom of exchange. This regime caused multiple negative consequences for the Venezuelan economy. Although as of today the exchange regime established in *Exchange Agreement No. 1* of 2018 remains in

force, also in that year the *Law on the Exchange Regime and its Illicit Activities* was repealed.

As a result of *Exchange Agreement No. 1*, the previous complex exchange rate regime, dispersed in various *Exchange Agreements*, was significantly simplified. Through the repeal of the *Law on the Exchange Regime and its Illicit Activities*, basic operations for a twenty-first century economy were decriminalized.

Since these reforms, which have remained unchanged, today it is legal and possible to contract in foreign currency, which has partly facilitated economic activity.

4. *Easing of the audit policy*

One of the characteristics of the economic model for several years was the control policy on different sectors of the economy. In this supervisory policy, emphasis was placed on the control of the prices of mass consumption products, for example, through inspections of *retail chains*. In recent years, inspections have decreased significantly, although the *Organic Law on Fair Prices* and the administrative regulations that develop it remain formally in force.

However, it is true that rising inflation levels could eventually lead the authorities to pursue new pricing and supply control policies, as indeed happened in recent August.

5. *End of the expropriation policy*

Another characteristic of the economic model applied in the country, was the intense expropriation policy, which resulted in more than 150 Expropriation Decrees between 2005 and 2013.

Many of these expropriations or other property confiscatory measures were imposed on foreign investors' assets, triggering a high number of arbitration proceedings.

Such massive policy of expropriations ceased years ago. In the last three years, the Venezuelan President has not practically issued expropriation decrees.

6. *Restitution of expropriated assets*

In recent months the National Assembly and the National Executive have promoted the restitution of assets expropriated from foreign and national investors, through the previously referred expropriation policy. An emblematic case was the recent restitution to its legal owners of the Sambil Shopping Center in La Candelaria parish.

7. Sale of a limited number of shares of public companies through the stock market

It has even been announced the intention to offer in the stock exchange percentages of up to 10% of the capital of public companies. The Bank of Venezuela, emblematic bank in the history of the country since the late nineteenth century, acquired by the Venezuelan State in 2009, has already formally announced its intention to offer up to 10% of its shares to private investors.

8. The fundamental legal bases for private investment: the LCA and the LOZEE

In recent years, the Government has sponsored the approval of two laws, as frameworks for private, national and foreign investment: the *Constitutional Anti-blockade Law* (LCA), issued by the National Constituent Assembly in October 2020 and the *Organic Law of Special Economic Zones* (LOZEE), sanctioned by the National Assembly in July 2022, which content was already summarized in this LEGA Perspectives.

A. Relationship between LCA and LOZEE

During a meeting held on May 26th, 2021 between President Nicolas Maduro and Deputies of the National Assembly, aspects of the Special Economic Zones Bill were discussed. The President pointed out that the Organic Law of Special Economic Zones is "daughter" of the Anti-blockade Law, since its objective would be to reformulate the effort to develop zones throughout the country. For her part, Deputy Gladys Requena said that National Assembly considered it necessary to enact a set of laws to ensure the applicability of the Anti-Blockade Law.

Thus, in the context of the changes that are taking place in the Venezuelan legal environment, the LCA dictated by the National Constituent Assembly in October 2020, and now the LOZEE, constitute two Laws on which the National Executive seeks to rely to increase national and foreign investment in Venezuela.

B. The LCA: special rules for contracts or strategic partnerships with the Venezuelan State

The LCA justifies its regime in the policy of economic sanctions that has been implemented by international organizations, some countries and, consequently, by the financial system (Article 1).

The LCA seeks to become the institutional-legal support for one of the features of the new economic model that is being promoted by the National Executive: the execution of contracts and strategic alliances between decentralized bodies and entities and private companies, which derive from the privatization of State owned companies, or through the restitution of assets that are currently in State's hands.

C. The LOZEE: special conditions for private investment in certain geographical areas

For its part, the LOZEE was included in the legislative agenda approved in March 2021, and is undoubtedly the most important law in economic matters issued since the installation of the National Assembly in January last year.

According to Article 1 of this Law, it has a dual purpose: (i) it constitutes the regulatory framework for the creation, organization, operation, administration and development of Special Economic Zones (SEZs) and (ii) it creates the economic, fiscal and other incentives applicable in those SEZs.

The first purpose of the Law requires its concretion through Decrees to be issued by the President. To achieve the second object of the Law, it will require (i) the issuance of specific regulations by competent bodies, and (ii) the rules contained in the "Economic Activity Agreement" which must be agreed along with the National Superintendence of Special Economic Zones (SUNAZEE).

The application of the regime derived from the LOZEE requires: (i) that the President issues a Decree creating an SEZ; (ii) that the investor operates in any of the sectors and activities on which the SEZ may be organized: (a) industrial; (b) technology; (c) financial services; (d) non-financial services, (e) agri-food production, (f) or other which may be considered necessary for the development of the country, and (iii) that the investor has concluded with SUNAZEE an Economic Activity Agreement.

D. From LCA to LOZEE

As can be seen, the LCA and the LOZEE start from the same premise, to promote private investment, with different approaches.



The LCA seeks to establish special rules for the execution of contracts and strategic alliances between decentralized entities and private companies, which may arise even from the privatization of State companies, or through the restitution of assets that are currently in the hands of the State.

For its part, the LOZEE establishes the bases – to be complemented by other regulations – so that in certain geographical areas there are special conditions that favor foreign and national investment, whether or not that investment materializes through agreements or strategic associations with the Venezuelan State.

Contacts:

LEÇA Abogados
Office:
+58 (212) 277.22.00
E-mail: infolaw@lega.law
Web: www.lega.law

Carlos García Soto
E-mail: cgarciasoto@lega.law
Phone: +58 (414) 236 1240

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