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WHAT ARE THE LEGAL WAYS TO PARTICIPATE IN THE UPSTREAM OIL BUSINESS IN VENEZUELA?

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In January 2026, the Law amending the Organic Law on Hydrocarbons *was published in the Official Gazette No. 6,978 of January 29, 2026.*

It is, in fact, a new Law, since it substantially modifies the regime of private participation in the Venezuelan hydrocarbon market, allowing, after fifty years, private investors to participate directly in the primary activities (*upstream*) of the oil activity. This includes liquid hydrocarbons and associated natural gas.

In this *LEGA Perspectives* we have summarized, in an introductory way, what are the legal ways to participate in the Venezuelan upstream oil business from the *Organic Hydrocarbons Law* of 2026 (LOH).

Under the new Law of 2026, we can classify the forms of private participation in primary activities into two types: *direct participation* and *indirect participation*.

I. Direct participation: the contract for the development of primary activities

1. Introduction

The new Law introduces a section in Chapter III, relating to the exercise of primary activities, entitled "Contracts for the development of primary activities".

This is the main innovation of the LOH. *Under the 2006 Law, primary activities were entirely reserved to the State.* The private party could participate *indirectly* in such primary activities only in its capacity as a minority shareholder in the joint venture. The 2026 Law includes a new figure for the exercise of primary activities by the private investor: the contract for the development of primary activities.

The contract for the development of primary activities is the figure that allows us to conclude that *the reservation in favor of the State for the exercise of primary activities has been partially repealed, since this contract empowers private operators to directly exercise primary activities.*

According to Article 40 of the new Law:

"Article 40. Companies exclusively owned by the Republic or their subsidiaries may enter into contracts with private companies domiciled in Venezuela for the execution of primary activities.

In these contracts, the operating company will assume the integral management of the exercise of the activities, at its exclusive cost, account and risk, after demonstrating its financial and technical capacity through a business plan approved by the Ministry with competence in hydrocarbons matters.

The Republic shall retain ownership of the hydrocarbon deposits on which the operating companies shall carry out their primary activities.

The procurement provided for in this article shall be excluded from the scope of application of the Decree with the Rank, Value and Force of Law on Public Procurement and its Regulations.

For the hiring of private companies domiciled in Venezuela, their suitability and capacity for the exercise of primary activities must be previously evaluated."

The *partial* repeal of the reservation in favor of the State for the exercise of primary activities is established in paragraph 3 of Article 23 of the new Law:

"Article 23. The primary activities indicated in Article 10 of this Law shall be carried out:

(...)

3. By private companies domiciled in the Bolivarian Republic of Venezuela, within the framework of contracts signed with companies exclusively owned by the Republic or their subsidiaries."

For the exercise of these primary activities by private companies domiciled in Venezuela, an operating company exclusively owned by the Republic or one of its subsidiary companies will be required to assign to it, in whole or in part, by contract, the rights that have been granted to it.

Article 25 states in this regard:

"Article 25. The Ministry with competence in hydrocarbons matters may grant the operating companies referred to in paragraphs 1 and 2 of Article 23, the right to exercise primary activities. Likewise, it may transfer to them the ownership or other rights over movable or immovable property of the private domain of the Republic, required for the efficient exercise of such activities. The Ministry with jurisdiction over hydrocarbons may revoke these rights when the operators do not comply with their substantial obligations, in such a way as to prevent the achievement of the purpose for which such rights were transferred.

The operating companies exclusively owned by the Republic or their subsidiary companies may assign in whole or in part, by contract, to the companies indicated in paragraph 3 of Article 23 of this Law, the rights that have been granted to them, in accordance with the provisions of this Article, with the prior authorization of the Ministry with competence in hydrocarbons matters."

Article 42 of the LOH empowers companies owned exclusively by the Republic and their subsidiaries that have signed contracts for the development of productive activities to: (i) grant the operating company the right to use the assets and materials of its property or legal availability intended for the exercise of primary activities and (ii) assign to the operating company the right to use the operational area and the area delimited, with prior authorization from the Ministry with competence in hydrocarbons matters¹.

2. Purpose of contracts for the execution of primary activities

The object of the contract for the development or execution of primary activities is indicated in article 40 of the LOH of 2026:

"Article 40. Companies exclusively owned by the Republic or their subsidiaries may enter into contracts with private companies domiciled in Venezuela for the execution of primary activities.

In these contracts, the operating company will assume the integral management of the exercise of the activities, at its exclusive cost, account and risk, after demonstrating its

¹ Article 42 then states that as consideration for the use of such assets and areas, the operating company shall pay to the companies exclusively owned by the Republic or their subsidiaries, a percentage of the volume of hydrocarbons audited that will be set in the respective contract. The rights conferred on such assets and areas will automatically terminate upon termination of the contract.

financial and technical capacity through a business plan approved by the Ministry with competence in hydrocarbons matters.

(...)

However, in order to determine precisely the object of these contracts, it is necessary to read that part of Article 40 of the Law together with Article 10, which defines what primary activities (*upstream*) are.

Therefore, in accordance with Articles 40 and 10 of the LOH, the object of the contract for the execution of primary activities is the comprehensive management of the exercise of activities related to the exploration in search of hydrocarbon deposits, their extraction in their natural state, their initial collection, transport and storage, as well as those related to the works that their management requires.

Article 40 of the Law states that under this contract, the contractor, called the "operating company", assumes the integral management of the activities, at its exclusive cost, account and risk. That is why, unlike the mixed company model, under the contract for the development of primary activities, the operating company directly carries out private activities.

3. The subjects of the contract for the development of primary activities

According to Article 23 of the Law, the subjects of the contract for the development of primary activities are (i) companies exclusively owned by the Republic, or (ii) subsidiaries of companies exclusively owned by the Republic and, on the other hand, a private company domiciled in Venezuela. These contracts cannot be signed by joint ventures.

4. Consideration in contracts for the development of primary activities

Article 41 of the LOH indicates which are the two forms of consideration or remuneration of the company operating under the contract for the development of primary activities. The parties to the contract may choose one of these two modalities, or a combination of both: (i) a percentage share of the volumes of controlled hydrocarbons, which will be marketed directly by the operating company and (ii) any other form of participation in the benefits that is determined by the Ministry with competence in hydrocarbons matters.

II. Indirect participation: the shareholder of the joint venture

1. Participation as a minority shareholder in a joint venture



First, the private sector can participate in the primary activities as a minority shareholder in the joint venture. It was the formula provided for in the 2006 Law. Under the 2026 Law, this route is maintained, although with possible extensions in the powers of the minority shareholder.

A. The majority shareholder of the joint venture

Under the 2026 Law, it is understood that primary activities may be carried out by "companies in which the Republic or a public entity holds a participation of more than fifty (50%) of the share capital, which grants shareholder control, which will be called Joint Ventures" (numeral 2 of article 23).

Thus, companies exclusively owned by the Republic are replaced by "public entity". Such a modification would allow that, for example, an Autonomous Institute is the majority shareholder of a joint venture. Such a solution coincides with the general regime of State enterprises provided for in the *Organic Law of the Public Administration*², which in its Article 103 states that decentralized entities may be majority shareholders in State enterprises.

B. The minority shareholder of the joint venture

Under the 2006 Law, the joint venture was one in which the National Executive (the Republic) or companies of its exclusive ownership had control of its decisions, by maintaining a participation of more than fifty percent (50%) of the share capital. The quality of minority partner in a joint venture was the way in which *-indirectly-* individuals (companies domiciled in Venezuela or abroad) could participate in the primary activities.

The new Law includes an article, Article 36, which expands the powers of the minority shareholder of joint ventures. The Ministry with jurisdiction over hydrocarbons may authorize the minority shareholder to (i) carry out the direct marketing of all or a quota of the production of the joint venture (under certain conditions); (ii) open and manage bank accounts in any currency and jurisdiction, for the use and administration of the funds, and (iii) exercise the technical and operational management of the joint venture directly or through a specialized oil service provider.

This power qualifies in practice the rule of Article 23 of the LOH. As we have seen, under this provision, contracts that may be signed by private companies for the execution of primary activities may only be signed with companies exclusively owned by the Republic or its subsidiaries. Therefore, these contracts, in principle, cannot be signed with joint ventures.

² Official Gazette No. 6,147 of November 17, 2014.



However, in accordance with paragraph 3 of Article 36 of the new Law, a joint venture may be authorized by the Ministry with competence in hydrocarbons matters to entrust the minority shareholder to exercise the technical and operational management of the joint venture (i) directly or (ii) through a specialized service provider. Therefore, in practice, a joint venture may entrust the minority shareholder to take over the technical and operational management of the joint venture directly, or, in turn, entrust it to a specialized service provider.

Such are, in summary, the forms of participation of the private sector in the hydrocarbons activity in the new LOH,³ which together with the regime on non-associated gaseous hydrocarbons complete the general regime in this area⁴.

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³ The reform of the LOH includes a third provision according to which:

"**THIRD.** Productive Participation Contracts and other contractual models signed on the basis of the Constitutional Anti-Blockade Law for National Development and the Guarantee of Human Rights shall maintain their full validity and legal effectiveness.

Within one hundred and eighty (180) days following the entry into force of this Law, the parties to the Productive Participation Contracts and other contractual models referred to in this transitory provision shall make the necessary adjustments to such contracts, in order to adjust them to the terms of this Law. During this period, the tax regime in force before the publication of this Law will continue to be applicable. In no case will the adaptation process imply or generate a deterioration of the conditions previously agreed contractually".

⁴ As is known, the activity related to gaseous hydrocarbons has had its own Law since 1999: the *Organic Law on Gaseous Hydrocarbons* (Official Gazette No. 36.793 of September 23, 1999).



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