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Recent developments in the Orinoco Belt

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As reported by the international and Venezuelan press, on January 8 2007 Hugo Chávez, the President of Venezuela, announced that "the extra-heavy oil projects in the Orinoco Oil Belt must come back to the hands of the state".

The Republic, through the state energy company PDVSA, took over these projects on May 1 2007. The BBC reported the event as follows: "Four projects taken over in the Orinoco Belt – which can refine about 600,000 barrels of crude oil a day – reverted to state control at midnight local time."

Background

In 1975 the Venezuelan state nationalised the exploration, production, manufacture or refining, storage, transportation by special means and commercialisation of hydrocarbons by means of the Nationalisation Law.

In 1997, pursuant to Article 5 of the Nationalisation Law, several international oil companies entered into association agreements with several PDVSA subsidiaries, in order to jointly undertake hydrocarbons activities in relation to heavy and extra-heavy oil in the Orinoco Belt of Venezuela. These association agreements were one of the exceptional cases in which the Nationalisation Law allowed PDVSA to establish partnerships with the private sector.

In order to implement his decision regarding heavy oil, among other controversial decisions announced at the same time, the president was given ample powers to legislate by means of decrees with the force of law, under an enabling law that was approved by the National Assembly and published in the Official Gazette of February 2 2007.

Under this Enabling Law, Chávez issued a Decree, which was published in the Official Gazette of February 26 2007, pursuant to which hydrocarbons activities related to heavy oil shall be transferred to new *empresas mixtas* (mixed companies). These were to be created in accordance with the Hydrocarbons Organic Law of 2001 as further amended in 2006, which was published in the Official Gazette of May 24 2006.

Mixed companies

According to the Hydrocarbons Law, mixed companies are corporations in which the Republic must own, directly or indirectly, more than 50% of the equity.

The Enabling Law provides the assumption by the Republic, "directly or through companies that are exclusively owned" by the Republic (this covers PDVSA and its subsidiaries), of the control of hydrocarbons activities in heavy oil under the association agreements. It also states that this control may be exercised by the Republic through mixed companies

The Decree reduces private participation in mixed companies, since it provides that the Republic, through PDVSA (by means of a subsidiary), must own at least 60% of their equity.

The Decree also provides for negotiations between the parties to the association agreements with respect to their participation in mixed companies; and Article 4 of the Decree establishes a four-month term, starting on February 26 2007, to conclude such negotiations, after which the same Article establishes a two-month period for the National Assembly to approve the agreements reached in them.

However, Article 3 of the Decree refers to "the transfer of control of all the activities performed by the associations to the state-owned company", under a transfer process ending on April 30 2007.

There is a contradiction between the transfer of control date of April 30 2007 and the four-month negotiation period (to which a two-month period must be added, in order to obtain the National Assembly's approval). In fact, on May 1 the Republic took over the operation of the projects, while the negotiations continue and the mixed companies have still not been formed.

Other relevant provisions of the Decree

The Decree states that the infrastructure, the transportation services and the upgraders of the entities under the association agreements shall be "freely used", presumably by PDVSA or an entity controlled by PDVSA. It does not specify who can freely use such assets and services, but it gives the Ministry of Energy the power to establish guidelines as to such use and to determine the price to be paid if the parties do not reach an agreed price.

The Decree also states that the areas to be allocated to mixed companies cannot have an extension of more than $100km^2$.

Banking and capital markets

Recommended firms
Tier 1
D'Empaire Reyna
Rodner Martínez & Asociados
Rodríguez & Mendoza
Tier 2
Baker & McKenzie
Bermúdez Nevett Mezquita López
Mendoza Palacios Acedo Borjas Páez Pumar & Cía
Travieso Evans Arria Rengel & Paz
Tier 3
Aarons & Asociados
Hoet Pelaez Castillo & Duque
Squire Sanders & Dempsey
Tinoco Travieso Planchart & Núñez
Tier 4
Despacho de Abogados miembros de Macleod Dixon
Torres Plaz & Araujo

Mergers and acquisitions

Recommended firms
Tier 1
Baker & McKenzie
D'Empaire Reyna
Mendoza Palacios Acedo Borjas Páez Pumar & Cía
Tier 2
Despacho de Abogados miembros de Macleod Dixon
Hoet Pelaez Castillo & Duque
Rodríguez & Mendoza
Squire Sanders & Dempsey
Tinoco Travieso Planchart & Núñez
Tier 3
Raffalli de Lemos Halvorssen Ortega Ortiz
Torres Plaz & Araujo

Project finance

Recommended firms
Tier 1
Baker & McKenzie
Rodner Martínez & Asociados
Rodríguez & Mendoza
Tier 2
D'Empaire Reyna
Despacho de Abogados miembros de Macleod Dixon
Mendoza Palacios Acedo Borjas Páez Pumar & Cía
Squire Sanders & Dempsey
Tinoco Travieso Planchart & Núñez
Torres Plaz & Araujo
Travieso Evans Arria Rengel & Paz

There's no easy way to leave Venezuela with Hugo Chavez in charge, as foreign investors are discovering. Banco Santander found itself in a lose-lose situation in 2008 when it went before the banking authority seeking permission to sell Banco de Venezuela – the country's third-largest bank – to a group of local investors. Alerted to the Spanish bank's plans, the president announced that the government itself would be taking control of Banco de Venezuela. But the government proceeded to hold off on committing to the deal, and all the while Banco de Venezuela's value plummeted on speculation of its inevitable seizure. By the time the government finally came to the table over 10 months later, Santander's asking price was effectively cut in half.

With Banco de Venezuela, Chavez adds the banking sector to his list of industries the government now has direct participation in. Last year the cement industry joined the ranks as well, with Cemex, Lafarge and Holcim forcibly brought to the market. Still, the collapse of global oil prices has effectively cut the Chavez administration's ability to meet its obligations to pay for seized companies, with some $12 billion owed to previous owners.

The government's illiquidity has also had an effect on the few infrastructure projects moving forward in Venezuela. Last March, Brazilian developer Odebrecht opted to slow work on its expansion of the Caracas metro system when faced with outstanding bills. With companies facing not only nationalisation but defaults on payments as well, Venezuela's financial lawyers foresee an increase in disputes between clients and the government. "Until last year we were not taking any companies to arbitration in Venezuela," one leading lawyer says. "This year things may be changing."

The prospect is grim for lawyers in Venezuela – lots of difficult negotiations with the government, none of the so-called sexy work of M&A and financing transactions with big name clients. Still, lawyers believe there will finally be movement in the markets when the global recession lifts, particularly in the project finance sector. Last July, Spanish developer Iberdrola was awarded a $2 billion concession to build a 1GW combined cycle gas power plant in Venezuela, which will be one of the largest power plants in Latin America when it is completed in an estimated three years.

While private and institutional lending is closed for the time being, lawyers say that the Venezuelan government is negotiating joint infrastructure development ventures with the Bric (Brazil, Russia, India and China) governments. Attorneys say these projects will undoubtedly require some form of private finance and service contracts.

Baker & McKenzie

Recently celebrating 50 years of practice in Caracas, Baker & McKenzie has a traditional reputation among multinationals operating in the Venezuelan market. Competitors note a decreased presence in financial transactions and speculate that the rash of nationalisations and departures may have shaken their client base, while admitting that all of Venezuela's firms have felt the squeeze. Still, rivals contend the firm's international network brings them a steady stream of corporate business. "I see them recently doing more day-to-day work instead of transactional work," one peer observes.

Competitors praise the firm's project finance leader Eugenio Hernández-Bretón as an impressive deal maker who has channelled his talents into scholarly pursuits as the firm's workload slows. "He is more focused on teaching but is very well respected," one commentator says. Though Venezuela's project finance markets are dormant, attorneys believe that when infrastructure development picks up Baker & McKenzie will again be a leading presence in the market.

Leading lawyers

Eugenio Hernández-Bretón
Luis M Vicentini

D'Empaire Reyna

A leader in both corporate and financial transactions, D'Empaire Reyna has remained buoyant on its longstanding reputation as more and more of Venezuela's financial legal work is taken up by the government's in-house counsels. Competitors note that the firm's financial practice has suffered under the nationalisation process and torpor in the capital markets. "They are primarily a securities law firm, and thus have been affected by changes in management," observes one peer. "Still, they are always present."

While peers admire Gustavo Reyna as a senior statesman in Venezuela's financial markets, competitors also note the hard work of two up-and-coming attorneys at D'Empaire Reyna: Fulvio Italiani and Carlos Omaña. "These two guys are the ones we see from the firm," one rival says, adding: "Gustavo is about client relations these days."

The firm participated in several of the biggest nationalisations of last year, including its representation of Banco Santander in its surrender of Banco de Venezuela last July. D'Empaire Reyna's attorneys were able to negotiate a $1.05 billion price for Venezuela's third largest bank in the highly-politicised transaction. The firm was also on hand when steel company Ternium ceded its subsidiary Sidor to the government last May. Partners Fulvio Italiani, José Humberto Frías and Carlos Omaña represented Ternium in the deal that netted $1.97 billion for the company.

D'Empaire Reyna also advised Econoinvest Casa de Bolsa as co-ordinators of a tender offer by Venezuela's telecoms ministry for the outstanding shares of CanTV. The undisclosed acquisition of the telephone company, finalised last April, completes the nationalisation process of the telephone company begun in 2007.

Leading lawyers

José Humberto Frías
Fulvio Italiani
Carlos Omaña
Gustavo J Reyna

Despacho de Abogados miembros de Macleod Dixon

The local arm of this Canadian firm has developed a traditionally strong presence in Venezuela's oil and gas industry. "They have an extremely successful hydrocarbons practice," notes one peer, "which is everything in Venezuela." Competitors point to Elisabeth Eljuri as Macleod Dixon's face not only in the firm's niche market but all around. "I think she pretty much runs the show there," one competitor observes.

Though commentators sometimes refer to the firm's presence in the petroleum industry as more like a boutique focus, clients contend that the firm has well-developed supporting practices in other corporate matters. "We get all our legal services from Macleod Dixon," one client says, "they are really a very important partners of us." The same client mentions Ramón Alvins as an adept team leader. "He does a terrific job coordinating the people we need and is for me the best channel of communication at the firm," the client explains.

With oil and gas markets at an effective stand-still, Macleod Dixon has had some success channelling work into other sectors of the Venezuelan economy, particularly with regards to 2008's wave of bank mergers. Toward the end of 2008 the firm advised Helm Bank, a local affiliate of Colombia's Banco de Crédito, in the sale of its operations to Banco Real for $40 million. Additionally, the firm has handled the acquisitions of several financial institutions by Venezuelan banker Gonzalo Tirado & Asociados.

Leading lawyers

Ramón J Alvins
Elisabeth Eljuri
Natalija Vojvodic

Mendoza Palacios Acedo Borjas Páez Pumar & Cía

Competitors note that the traditionally-structured firm's presence in transactional markets has diminished over the last decade, but contend the firm remains well-placed on the reputation it has built over the years. "They still maintain clout," one peer remarks, "but they are a family business with all the advantages and disadvantages it brings."

As the firm undergoes a generational change rivals point to Carlos Eduardo Acedo Sucre as Mendoza's leading lawyer. "He's kind of the new generation," states one attorney, adding: "He has been able to maintain a profile in banking, though he is more involved with insurance."

Sucre led the team that counselled a consortium of banks led by Deutsche Bank in a reverse project-finance transaction, in which the recently-nationalised steel company Sidor restructured its $1.8 billion in private debts. The restructuring was secured by three trusts comprised of Sidor's assets, representing the first time a trust was used for security purposes in Venezuela.

While there have been many departures of multinational corporations from Venezuela, Mendoza has managed to hold on to several important investors remaining in the market, including Coca Cola, Telefónica and German water turbine manufacturer Andritz Hydro.

In 2008, Mendoza successfully negotiated an expansion of the service contract held by Andritz Hydro and other members of a consortium to renovate the Guri Dam and Simón Bolivar hydroelectric power plant.

Leading lawyers

Carlos Eduardo Acedo Sucre

Rodner Martínez & Asociados

Characterised by competitors as a boutique firm specialised in representing multinational banks, competitors say Rodner Martínez has undoubtedly felt the flight of foreign investment from Venezuela. Still, rivals note that the firm has cornered the financial market among multilateral lenders, including IDB (International Development Bank) and the World Bank.

James-Otis Rodner has a reputation in Venezuela's legal community as the nation's foremost senior statesman in the market. "He has a background in business, so he looks at lawyering with a business flavour," one peer explains, adding: "He's by far he is the best lawyer if you ask me." Jaime Martínez-Estévez is noted by rivals as the go-to counsel for international development institutions.

Leading lawyers

Jaime Martínez-Estévez
James-Otis Rodner

Rodríguez & Mendoza

Nearing 100 years in Venezuela's market, competitors contend Rodríguez & Mendoza has fallen behind the curve in terms of transactions over the past year. Still, rivals admit that the firm has remained a leading presence in capital markets deals. "They're the ones we keep bumping into," one leading lawyer notes. Rodríguez & Mendoza is particularly recognised as a leading player in Venezuela's hydrocarbons sector.

Venezuela's attorneys speak well of Reinaldo Hellmund as an important counsel in the oil and gas industry, as well as an effective negotiator across the table. "He's a constructive counterparty – he wants to get the deal through," remarks one peer.

Leading lawyers

Oswaldo Anzola
Reinaldo Hellmund

Squire Sanders & Dempsey

In October 2008, Squire Sanders & Dempsey announced the formation of a worldwide network with affiliate partnerships throughout Latin America, which will add regional support for the US firm's office in Venezuela. Squire has been a traditional counsel to American investors doing business in Venezuela, and some of the nation's attorneys believe this has led to friction with the government. "This administration may not be the friendliest counterparty for them," one peer comments. Still, partners of the firm contend that they have had no trouble in their recent representations before the government.

With the nationalisation of the cement industry Squire is assisting France's Lafarge, Venezuela's second-largest cement producer, in negotiating an acceptable price for the surrender of its local assets. While a final agreement had not been reached at the time of writing, Lafarge signed a memorandum of understanding with the government in August 2008 stipulating a $267 million price tag for the lion's share of the company's local assets.

With financial transactions in Venezuela flagging, Squire has built a niche representing local financial institutions setting up operations in Puerto Rico, taking advantage of the US commonwealth's favourable currency exchange and Federal Deposit Insurance Company (FDIC)-insured status. One such client is Banco Activo, which the firm recently helped establish a Puerto Rican entity.

Leading lawyers
Juan José Delgado
Hernando Diaz-Candia

Other ranked firms

Fred Aarons of **Aarons & Asociados** is characterised as a young, hardworking and professional lawyer respected in both the legal and banking communities of Venezuela. Having spent six years as chief counsel at Citibank's Venezuela branch, Aarons made a name for himself at an early age that allowed him to build a boutique financial services firm comprised of young, talented lawyers focused on quality legal representation.

"He is very ethical and careful, and we always follow his advice," says one client of Fred Aarons. Competitors note that Aarons' skill and reputation has allowed him to take part in some interesting cross-border securities deals.

For example, Aarons represented utility provider La Electricidad de Caracas – Venezuela's largest private company – in two back-to-back securities transactions on the Luxembourg market that were the largest transactions of their kind in Venezuela in 2008.

Leading lawyers: Fred Aarons