

# Venezuela's Potential Debt Restructuring and Economic Recovery Efforts: Some Key Legal and Policy Challenges

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Unfortunately, Venezuela is currently facing an unprecedented crisis on a truly tragic scale. It is first and foremost a grave humanitarian crisis, with untold suffering on the part of the Venezuelan people resulting from widespread malnutrition, growing poverty, the spread of otherwise preventable diseases such as malaria, and a breakdown of Venezuela's health care system.

Beyond that, it is also a major financial and economic crisis. By many different indicators, the Venezuelan economy is in a state of virtual collapse, with the economy estimated to have contracted by approximately fifty percent or more in recent years<sup>1</sup>. As many observers have noted, the contraction of the Venezuelan economy is even greater than the contraction experienced by the US during the Great Depression<sup>2</sup>.

Among many major economic and financial woes, Venezuela is suffering from serious hyperinflation, a deeply devalued currency, high unemployment, and dwindling foreign exchange reserves. Venezuela is also facing what is considered to be a completely unsustainable debt burden with outstanding debt that is believed to exceed one hundred fifty billion dollars<sup>3</sup>.

## 1. Role of Venezuelan Professionals in Addressing the Crisis

For Venezuela to tackle the huge challenges it is now facing, it will need a cadre of top-notch professionals from Venezuela who are public-spirited and can bring a wealth of experience and knowledge to bear in addressing these challenges. In this section, I will briefly discuss the role that Venezuelan professionals, particularly Venezuelan lawyers, can play in helping resolve

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<sup>1</sup> See, e.g., KURMANAEV, Anatoly: «Venezuela's Collapse Is the Worst Outside of War in Decades, Economists Say», *The New York Times*, May 17, 2019.

<sup>2</sup> See, e.g., VYAS, Kejal: «Venezuela Quietly Loosens Grip on Market, Tempering Economic Crisis», *Wall Street Journal*, September 17, 2019, «... cautiously begun implementing free-market policies to tame hyperinflation and correct an economic contraction worse than America's Great Depression...».

<sup>3</sup> For background on Venezuela's current economic plight, see, e.g., Colleen Walsh, «Understanding Venezuela's Collapse», *The Harvard Gazette*, February 12, 2019 (interview with Professor Ricardo HAUSMANN, Harvard University).

the current crisis as this essay is part of this Journal's tribute to one such outstanding professional, James O. RODNER S.<sup>4</sup>.

Venezuela will need practical solutions to very real problems facing the country, but Venezuela will also need innovative solutions because many of the problems Venezuela is facing are without recent precedent and involve matters that are very complex and not likely to be readily susceptible to easy or otherwise conventional solutions.

At this critical juncture, Venezuela will need professionals who understand that what is at stake are not just abstract questions involving matters such as economic policy, financial and monetary policy, social policy, debt sustainability, and so forth. Rather, it will require individuals who not only have a technical mastery of such key substantive areas but, importantly, who also understand that what is at stake are the lives and well-being of nearly thirty-million Venezuelans, including the approximately four million Venezuelans or more who have reportedly sought exile in other countries.

Moreover, the professionals of Venezuela will have to work together in a cooperative and public-spirited way in developing and implementing solutions for a situation where there is no pre-established playbook. These

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<sup>4</sup> I have had the privilege and good fortune of knowing James RODNER for approximately twenty years. We first met when I was working on a project finance transaction in Venezuela and James served as our local counsel on the transaction, and we have remained friends and colleagues since that time. I have long been impressed with James's excellent skills as a lawyer, but also with his broad-ranging intellect and his insatiable intellectual curiosity. James is steeped in foreign cultures and foreign countries by virtue of his extensive foreign travels around the globe, his fluency in five languages by my count (viz., English, Spanish, French, Portuguese, and Italian), and his deep interest in and knowledge of world history. His JD and MBA degrees from Harvard, as well as his earlier academic background in Venezuela, have provided him with a wonderful platform from which to tackle complex problems at the intersection of law, finance, and economics. James has very generously shared his vast knowledge and experience with legions of young Venezuelan lawyers, whether through his mentorship in law practice, his teaching at top Venezuelan universities over a period of many years, or his body of scholarship in many fields.

professionals will be on the front lines, and the importance of their role in addressing the current crisis cannot be overstated. In other words, Venezuela will need lawyers and other professionals with the rich and diverse experience and broad and thoughtful outlook of many Venezuelan professionals –individuals like James RODNER and his fellow Venezuelan professionals– to address this unprecedented crisis facing Venezuela.

James RODNER and his many very talented colleagues in the Venezuelan bar (a number of whom I have had the distinct pleasure of knowing) and the Venezuelan business community will shoulder major responsibilities in addressing and resolving this crisis. Yet, to the extent there are such highly experienced professionals in Venezuela who can appreciate the multidimensional and interdisciplinary nature of the problems Venezuela is facing, the resolution of these problems will proceed more smoothly (but certainly not without great challenges given the enormity and severity of the problems).

Many of the key players in the Venezuelan recovery effort are likely to be non-Venezuelan actors such as the international financial institutions (e.g., the International Monetary Fund, the World Bank, the Inter-American Development Bank, CAF, etc.) as well as foreign investors and creditors. Moreover, many of the initiatives for addressing the Venezuelan situation are likely to have a very strong international dimension, such as any financial rescue package that may be mobilized by the international financial institutions and certain foreign governments<sup>5</sup>. Venezuelan professionals will therefore need to interact with and coordinate their efforts with a broad array of foreign players.

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<sup>5</sup> See, e.g., «The Day After: How Venezuela's Economy Can Recover from The Maduro Regime», *The Economist*, January 31, 2019 (a brief discussion of the so-called «morning-after plan» developed by Harvard professor Ricardo HAUSMANN, including the need for an infusion of approximately \$ 60 billion from the international financial institutions including the IMF). See also Earl Anthony WAYNE and Moises RENDON, «Planning for the Day After in Venezuela», Center for Strategic & International Studies (CSIS), March 28, 2019 (available at <https://www.csis.org/analysis/planning-day-after-venezuela>).

## 2. Brief Overview of Key Issues

I will now briefly enumerate some of the key substantive issues that the professionals in Venezuela will have to grapple with if and when there is finally a transition in government from the current Maduro regime (as there is unlikely to be much progress on these challenges until there is such a change in government). I will focus on issues with more of an economic/financial dimension, including in particular matters related to any future debt restructuring and economic recovery efforts by Venezuela. (Addressing the humanitarian crisis in Venezuela will certainly be the top priority for any new government, but that subject is beyond the scope of this article).

i. Debt Restructuring: Venezuela has a huge debt burden, and it will need to restructure its outstanding debt in order to achieve a sustainable or manageable debt burden.

ii. Insolvency Proceedings: In order to protect itself from creditor lawsuits and enforcement actions as well as avail itself of a legal framework for restructuring its debt, PDVSA will need to decide whether it will file for insolvency proceedings in Venezuela or elsewhere (e.g., the US), and, in the case of a filing in Venezuela, whether it will file under an existing statute or a newly created statute.

iii. Economic Recovery –Reviving Venezuela's Oil Industry–: Venezuela's oil production capabilities have decreased dramatically in recent years, and a new government in Venezuela will need to revive the oil industry since historically Venezuela's oil industry has been the principal driver of the Venezuelan economy.

iv. Economic Recovery –Diversifying Venezuela's Economy–: Given Venezuela's heavy dependence on its oil industry, a new Venezuelan government might well consider a strategy of economic diversification so that the Venezuelan economy is no longer so dependent on the vagaries of the booms and busts of the oil commodity cycle. Moreover, as the global community grapples with climate change and considers steps to achieve a post-carbon future,

a new government in Venezuela will also need to consider how it will move the Venezuelan economy away from its reliance on the oil industry.

v. *Asset Recovery*: In view of reports that billions of dollars of assets have been diverted from Venezuela's public coffers (including from PDVSA), a new government in Venezuela would be well advised to consider a program of asset recovery so that misappropriated assets can be repatriated to Venezuela for the benefit of the Venezuelan people.

We will discuss each of the foregoing issues in some detail below, and we will see how the challenges facing Venezuela are not likely to yield to conventional solutions or to a mindset that does not appreciate the multidimensional and interdisciplinary nature of the problems facing Venezuela. (In the course of the following discussion, we will also flag some potential Venezuelan law issues that might arise in the course of addressing the myriad challenges currently facing Venezuela and where the informed input of Venezuelan lawyers in analyzing the relevant issues and developing potential solutions will likely be indispensable).

### **3. Major Issues in a Debt Restructuring/Economic Recovery Scenario**

#### *3.1. Debt Restructuring*

Venezuela has a staggering debt load estimated to be \$150 billion or more. This consists of debt of both the Republic of Venezuela and its state-owned oil company, PDVSA. Venezuela owes debt to a very broad range of creditors, including bondholders, bilateral creditors, suppliers/trade creditors, arbitration award holders, holders of claims for blocked funds (e.g., airlines, etc.), promissory noteholders, and so forth.

For Venezuela to recover economically, it will need to undertake a comprehensive debt restructuring so that going forward it will not have the unsustainable debt burden it is now carrying—a debt burden that is so unsustainable

that Venezuela is currently in default on most of its outstanding debt<sup>6</sup>. Any eventual Venezuelan debt restructuring, which is not likely to take place until a new government is in place<sup>7</sup>, promises to be unlike any recent sovereign debt restructurings.

There are many factors that could potentially complicate a Venezuelan debt restructuring, such as the large number of creditors (which will likely pose significant challenges for creditor coordination) and the broad diversity of creditor interests (which could well lead to major intercreditor tensions). Furthermore, the collapsed state of the Venezuelan economy could, among

things, limit the resources available to support a debt restructuring, and Venezuela's largest bilateral creditors, China and Russia, could play wild card roles in any eventual debt restructuring.

Indeed, for these and other reasons, any eventual Venezuelan debt restructuring promises to be extraordinarily messy and complicated.

### 3.1.1. Applying Standard Restructuring Tools and Techniques

Nonetheless, restructuring tools and techniques that have often been used in other sovereign debt restructurings could be applied in resolving Venezuela's debt crisis. For example, there may need to be debt forgiveness by Venezuela's creditors –i.e., reductions in the outstanding principal on certain of Venezuela's existing debt obligations, also known as 'haircuts'– with the aim of leaving Venezuela with a sustainable debt burden post-restructuring.

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<sup>6</sup> For various views on how a Venezuelan debt restructuring should proceed, *see*, e.g., Lee BUCHHEIT and Mitu MULATI, «How to Restructure Venezuelan Debt», July 2017 (available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3006680](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3006680)); Mark A. WALKER and Richard J. COOPER, «Venezuela's Restructuring: A Path Forward», *Emerging Markets Restructuring Journal* (Cleary Gottlieb), Summer 2019 (available at <https://www.clearygottlieb.com/-/media/files/emrj-materials/issue-9-2018/venezuelas-restructuring--a-path-forward-pdf.pdf?h=16&thn=1&w=16.ashx&hash=6FAD5288D01C063BAEA8F4E9DA59D870D867D0EC>).

<sup>7</sup> For a discussion of why a Venezuelan debt restructuring will likely not take place until a new government is in place, *see*, e.g., Steven T. KARGMAN, «Venezuela Needs a Debt Restructuring», *The International Economy* (Fall 2018), pp. 59–60.

Alternatively, at least at the outset of any restructuring exercise, there might be short-term reschedulings of maturities, known as debt reprofiling, on Venezuela's outstanding debt. For those creditors and other stakeholders who believe that Venezuela is fundamentally facing more of a liquidity crisis as opposed to a solvency crisis in light of Venezuela's vast oil reserves (reputed to be the largest in the world), debt reprofiling may well prove to be a more palatable option than outright reductions in principal (i.e., debt forgiveness).

Moreover, as with many sovereign debt restructurings, any eventual Venezuelan debt restructuring may involve adjustments in the interest rates or coupons on Venezuela's outstanding debt so that Venezuela's debt service payments become more manageable or sustainable.

As has been suggested by various observers, in light of centrality of oil to the overall Venezuelan economy, Venezuela may well include so-called oil warrants as part of any debt restructuring package. Other oil-producing countries have used oil or other commodity-based warrants in past sovereign debt restructurings. Basically, with oil warrants, creditors would be entitled to an additional payout on their restructured debt above and beyond the required debt service payments on the restructured debt if and when the price of oil exceeds a certain baseline projection for the price of oil<sup>8</sup>.

Oil warrants are one type of so-called «value recovery instruments» used in sovereign debt restructurings<sup>9</sup>. GDP warrants, which were used in the Greek debt restructuring in 2012 and the Argentine debt restructurings in 2005

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<sup>8</sup> For a discussion of how oil warrants might be designed for purposes of a Venezuelan debt restructuring, *see*, e.g., Thomas MOATTI and Frank MUCI, «An Economic Framework for Venezuela's Debt Restructuring», pp. 30-34 (March 2019) (available at <https://www.hks.harvard.edu/sites/default/files/degree%20programs/MPAID/files/Moatti%2C%20Thomas%20and%20Muci%2C%20Frank%20SYPA.pdf>).

<sup>9</sup> For a discussion of value recovery instruments (including so-called GDP warrants and oil warrants), *see* generally Lee BUCHHEIT, Guillaume CHABERT, Chanda DELONG, and Jeromin ZETTELMEYER, «How to Restructure Sovereign Debt: Lessons from Four Decades», pp. 14-15 (Peterson Institute for International Economics, Working Paper 19-8, Mayo 2019).



and 2010, represent another type of value recovery instrument where creditors would make an additional recovery if a country's GDP exceeds certain baseline projections for the country's GDP performance.

### 3.1.2. Applying Less Commonly Used Sovereign Debt Restructuring Tools and Techniques

Yet, in addition to the foregoing debt restructuring techniques, there may also be other techniques employed in any eventual Venezuelan debt restructuring that have not been employed in many of the recent sovereign debt restructurings.

#### 3.1.2.1. Debt-for-Equity Swaps

##### i. 1980s-Style Debt-for-Equity Swaps

For example, a future Venezuelan debt restructuring might involve debt-for-equity swaps or conversions. Such swaps are often used in corporate debt restructurings whereby creditors forgive a certain amount of debt in exchange for receiving a certain portion of the equity (i.e., a certain number of shares of stock) in the debtor company. In corporate debt restructurings, debt-for-equity swaps are not uncommon and represent a fairly straightforward way for a corporate debtor to deleverage its balance sheet.

However, debt-for-equity swaps work differently in the sovereign context than in the corporate context. Obviously, unlike private corporations, a national government qua national government does not issue shares in itself, and thus the sovereign itself does not have any equity in itself that it can offer as part of a debt-for-equity swap. Rather, the sovereign government in question has to identify companies in the debtor country in which a creditor/foreign investor could effectively exchange debt for shares. Not infrequently, the companies which the sovereign identifies for purposes of a debt-for-equity swap are companies that were formerly state-owned enterprises but that have since been privatized (and thus may have stock available for purchase/exchange by the creditor/foreign investor).

At its most basic level, in a debt-for-equity swap in the sovereign context, the «commercial debt owed by a sovereign debtor to private creditors is

purchased by an investor in the secondary market and is then converted into an equity investment in the debtor country»<sup>10</sup>. However, there is often an intermediate step in this process: the foreign investor exchanges the debt it has purchased on the secondary market into the local currency of the sovereign debtor, and it is that local currency that is then used to purchase the equity in the local company.

These types of debt-for-equity exchanges were not uncommon in debt restructurings in Latin America from roughly the mid-1980s through the mid-1990s<sup>11</sup> during the period when a number of Latin American countries were undergoing major debt restructurings<sup>12</sup>. In roughly the same time frame, a number of Latin American countries experienced a wave of privatizations of their state-owned enterprises, and these privatizations thus provided a source of equity that national governments could then exchange for sovereign debt instruments as part of the debt-for-equity swaps<sup>13</sup>.

<sup>10</sup> See, e.g., Sailesh S. RADHA, «Debt-Equity Swaps: Structure, Impacts and Perspectives», p. 3 (available at <http://borealisga.com/wp-content/uploads/2015/10/International-Debt-Restructuring.pdf>). For a slightly more elaborate explanation of a sovereign debt-for-equity swap, see *id.* at pp. 3-4 («In a debt-equity swap, external debt of a developing country is converted into local currency funding for equity investment in that developing country...») (internal citation omitted).

<sup>11</sup> For a discussion of debt-for-equity swaps as used in the Latin American debt crisis, see, e.g., «Debt-Equity Swaps Draw Latin Criticisms», *The New York Times*, January 2, 1989 (noting various objections by Latin American government to debt-for-equity swap programs); Daniel H. COLE, «Debt-Equity Conversions, Debt-for-Nature Swaps, and the Continuing World Debt Crisis», (1992) (articles by Maurer Faculty, Paper 690); John K. SHUBIN and Daniel J. GIBBY, «The Promotion of Debt-Equity Swaps in Latin America: A Survey of the Regulatory Regimes and the International Policy Framework», *Inter-American Law Review*, Vol. 20:1 (1988); Stephen M. WALLENSTEIN and James R. SILKENAT, «Investment Funds and Debt-Equity Swaps: Broadening the Base of New Financial Tool», *Fordham International Law Journal*, Vol. 12:8 (1988).

<sup>12</sup> For a very brief synopsis of the Latin American debt crisis and its origins, see, e.g., Jocelyn SIMS and Jessie ROMERO, «Latin American Debt Crisis of the 1980s», *Federal Reserve History* (November 2013).

<sup>13</sup> See e.g., Sailesh S. RADHA *supra* at note 10, «Debt-Equity Swaps: Structure, Impacts and Perspectives», p. 5 («From 1985 to 1996, debt-equity swaps totaled US\$38.6 billion. The linkage of debt-equity swaps to privatization programs stimulated increased swap transactions in 1989-1990, primarily in Latin America»).

Indeed, Venezuela itself participated in debt-for-equity swaps during this period. Venezuela adopted a debt-equity swap program in the mid-1980s<sup>14</sup> and applied it through the early 1990s. Under that program, the foreign investor would first purchase Venezuelan sovereign debt at a discount from a creditor (such as a commercial bank) in the secondary market. Second, the foreign investor would then convert that debt into bolivars, the legal tender of Venezuela, at a predetermined rate set by the Venezuelan government<sup>15</sup>. Finally, the foreign investor would use those bolivars to purchase equity of a company operating in Venezuela<sup>16</sup> (but only in «export enterprises, import substitution enterprises, failing companies and various specific economic sectors...»), as set forth in guidelines established by the government<sup>17</sup>.

In the context of an eventual Venezuelan restructuring in the coming years, it is possible that a new Venezuelan government might consider whether there are any state-owned enterprises that would be suitable candidates for privatization. For example, there are a number of major Venezuelan companies in various industries –e.g., cement, aluminum, steel, auto parts, etc.– that are now Venezuelan state-owned companies, but these same companies were previously privately owned companies until they were expropriated by the Chavez regime in the period from roughly 2007 onward.

Many of these companies have now fallen on hard times as state-owned enterprises<sup>18</sup>, and thus, as a policy matter, a new Venezuelan government might

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<sup>14</sup> For a detailed discussion of the Venezuelan debt-for-equity program, see, e.g., Brian Hannon and Marie Haugen, «Latin America: Debt Conversion Proliferates», *Business America*, June 22, 1987, p. 5.

<sup>15</sup> *Id.* (pointing out that foreign investors might find themselves disadvantaged under this system since the official exchange rate (28 bolivars per US dollar) was twice the market rate (14.5 bolivars per US dollar), which could have the effect of «minimizing the gain of the 25 percent discount [the price in the secondary market] on the Venezuelan debt»).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Jim WYSS, «Venezuelan Government Controls More Than 500 Businesses –and Most Are Losing Money–», *Miami Herald*, March 14, 2017 (citing a report indicating that 70 percent of the 511 companies that are either wholly owned or partially owned by the Venezuelan government are losing money).

wish to consider whether privatization would provide a reliable pathway for improving the performance and profitability of these companies. If some of these now state-owned enterprises were to be privatized by a new Venezuelan government, that might create the conditions for establishing a new program of debt-for-equity swaps as one avenue for restructuring Venezuela's outstanding debt. Under such a program, Venezuela's creditors could exchange their debt for shares in what would be the then-newly privatized enterprises.

Nonetheless, if a new Venezuelan government were to initiate a new debt-for-equity swap program, the Venezuelan debt itself held by the creditor/investor would be exchanged directly for shares in the private companies such as newly privatized enterprises<sup>19</sup>. This would stand in contrast to the approach used in the 1980s-1990s where it was bolivars that were exchanged for shares in companies.

The bolivar-based approach used for Venezuelan debt-for-equity swaps in the 1980s would not work under present circumstances due to the serious hyperinflation that currently exists in Venezuela. With a deeply devalued bolivar as a result of the current hyperinflation in Venezuela, a company participating in the debt-for-equity swap would essentially have no use for bolivars (except perhaps to make an immediate payment of an invoice denominated in bolivars).

Finally, it should be noted that, in implementing a debt-for-equity swap along the lines discussed above, a new government in Venezuela would certainly want to ensure that it had conducted a proper financial valuation of the enterprise in question (i.e., the enterprise in which the foreign investor/creditor would receive equity). That would be the only way the new government could ensure that it is receiving fair value for the equity that it is giving to the foreign investor/creditor in exchange for the debt that is being tendered and that the government is therefore not shortchanging itself or the Venezuelan people.

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<sup>19</sup> A new Venezuelan government would need to develop and publicize the precise mechanics and parameters for these debt-for-equity swaps.

## ii. New Venezuela-Specific Debt-for-Equity Swaps

Another type of debt-for-equity swap, where the equity component is broadly construed, may also be relevant for those parties developing a Venezuelan restructuring plan. However, unlike the debt-for-equity swaps discussed above, the equity component of the swap would not relate to shares in a corporation. Rather, it is conceivable that in a future Venezuelan debt restructuring some of the creditors, such as perhaps creditors who are players in the oil industry (e.g., oil field service operators, etc.), may be willing to forgive a portion of their debt in exchange for, say, a certain quantum of development rights in Venezuelan oil fields.

For those creditors undertaking such an exchange, they would need to be knowledgeable about and indeed be experts in the oil business, particularly in matters concerning oil exploration and development. The value that the creditors will be receiving as part of this exchange will be dependent on their ability to produce oil from the development rights that they have been given and will also be dependent on the price of oil at the time these creditors are trying to sell the oil that they have developed.

Thus, among other things, these creditors will need to have a view as to how difficult it will be to develop the oil reserves in question and how long it will take to develop such reserves. These creditors will also need to have a view regarding the future price of oil, which is itself subject to a considerable amount of uncertainty given the significant fluctuations in the price of oil over time.

To be sure, a new Venezuelan government would also need to have its own view as to the proper valuation of the oil development rights that it was granting the creditor/investor participating in the debt-for-equity swap. In order to develop such a view, a new government would need to consult with experts to undertake a financial valuation of the development rights in question.

Obviously, a new government would not want to give such a creditor/investor a bundle of development rights for a price that did not fully reflect the underlying

value of the development rights in question, and that is why an expert valuation will be so important in this process. Otherwise, a new government could open itself up to criticism that it was giving away the Venezuelan national patrimony at «bargain basement» prices.

For the present discussion, it should be noted that structuring such debt-for-equity swaps, including defining the precise mechanics for such swaps, will require Venezuelan law expertise so that such swap transactions will work under Venezuelan law. Venezuelan lawyers will also need to work through specific Venezuelan law questions that might arise, such as the following: Under existing Venezuelan law, can the development rights that will be granted by the government as part of a debt-for-equity exchange be given to a single creditor/corporation (particularly if it is a foreign creditor/corporation) as opposed to such development rights being given to a joint venture with a Venezuelan government entity?

### 3.1.2.2. *Potential Invalidation of Recent Debt Issuances*

If and when a new government comes to power in Venezuela, it will need to decide which of its outstanding debt obligations it plans to honor. There may be certain debt issuances which the new government considers to be invalid or possibly even illegitimate.

For example, the interim government led by Juan Guaidó, through an alternate Board of Directors it appointed for PDVSA, has already filed a lawsuit in the US courts seeking to invalidate the PDVSA 2020 bonds.<sup>20</sup> The PDVSA bonds are secured by a 50.1 % interest in the shares of CITGO Holding, the holding company for Citgo Petroleum Corporation (CITGO) which is almost universally considered to be one of PDVSA's crown jewels<sup>21</sup>.

<sup>20</sup> See, e.g., «Allies of Venezuela's Guaidó File Lawsuit Over PDVSA 2020 Bond», *Reuters*, October 29, 2019.

<sup>21</sup> For further discussion on the PDVSA 2020 bonds, see, e.g., Steven T. KARGMAN, «Oh! What A Tangled Web», *The International Economy* (Summer 2019), p. 55; Steven T. KARGMAN, «Shrinking Pie: The Ugly World for Venezuela's Creditors», *The International Economy* (Fall 2019), pp. 54-55.

Thus, if PDVSA were to default on a payment of the PDVSA 2020 bonds, PDVSA could lose control of Citgo to the PDVSA 2020 bondholders. If that were to happen, that would be a major blow to PDVSA and to the so-called interim government led by Juan Guaidó since CITGO is one of the few assets that the interim government putatively controls as a result of the US government's decision to recognize the Guaidó-led interim government.

In the US lawsuit, PDVSA is essentially challenging the validity of the PDVSA 2020 bonds since the security arrangement underlying the bond issuance—the pledge of CITGO Holding stock to the PDVSA 2020 bondholders—was not approved by Venezuela's National Assembly. Essentially, the argument by the alternate PDVSA board is that since the granting of the security interest was a matter of national interest, it should have been approved by the National Assembly as required by Article 150 of the Venezuelan constitution<sup>22</sup>. Issues such as this will require the informed and thoughtful analysis and opinion of Venezuelan lawyers, and indeed Venezuelan lawyers have already been asked to provide expert opinions on these matters in connection with the ongoing US litigation.

Beyond the specific situation of the PDVSA 2020 bonds, any new Venezuelan government may wish to review other debt issuances, particularly those of recent vintage (especially those in which the Constituent Assembly, but not the National Assembly, played a role), to establish whether such debt issuances were duly authorized and validly issued in accordance with the requirements of Venezuelan law, whether under the Venezuelan constitution or otherwise.

Obviously, there can be no certainty that a new government will prevail in any arguments that it makes in US courts or elsewhere that certain debt issuances are invalid and unenforceable. In any event, such arguments are likely to be vigorously contested by opposing parties with a vested interest in the matter,

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<sup>22</sup> Article 150 of the Venezuelan constitution provides in relevant part as follows, as translated into English: «Entering into contracts in the national public interest shall require the approval of the National Assembly in those cases in which such requirement is determined by law...», University of Minnesota Human Rights Library (available at <http://hrlibrary.umn.edu/research/venezuela-constitution.html>).

such as the PDVSA 2020 bondholders in the litigation in the US surrounding the validity of the 2020 bonds.

Apart from the types of debt issuances discussed above, there may be other categories of debt that will merit special scrutiny by any post-Maduro government. Specifically, a new government may wish to consider whether any debt claims against the Venezuelan government or PDVSA were incurred as a result of corruption and/or fraud and therefore would not need to be recognized as part of any debt restructuring. Indeed, the so-called interim government led by Juan Guaidó, in a statement in July 2019 setting forth guidelines to guide any eventual restructuring negotiations, referred specifically to «claims procured or tainted by demands of corruption allegedly committed by officials in the Chavez/Maduro regimes...»<sup>23</sup>.

Venezuelan lawyers will have to work with accountants and others in considering which debt claims are appropriate and should be recognized for purposes of repayment versus those debt claims that are fraudulent and/or otherwise considered to be invalid or illegitimate. As outlined in the guidelines from interim government discussed above, that will be an important element of the claims reconciliation process (which is itself an integral part of the overall debt restructuring process) since the reconciliation process essentially separates out those claims that will be included as part of the restructuring process and those claims that will essentially be thrown out and not included in the restructuring process.

### *3.2. Insolvency Matters: Reorganizing PDVSA and Insulating PDVSA from Creditor Actions*

Any well-designed insolvency law can offer a financially distressed debtor several distinct advantages, such as the following: it can provide a useful platform for the debtor to restructure its debt, it can shield the debtor from

<sup>23</sup> See Office of the Special Attorney General of the Bolivarian Republic of Venezuela, «Guidelines for the Renegotiation of the Chavez/Maduro Era Legacy Public External Debt», July 1, 2019, p. 2. See also Colby SMITH and Robin WIGGLESWORTH, «Venezuela's Opposition Sets Out Debt Restructuring Plans», *Financial Times*, July 3, 2019.



creditor lawsuits and enforcement actions during the pendency of the proceeding, and it can provide a mechanism for binding dissenting creditors to a restructuring plan approved by a requisite majority of the creditors.

As a relatively asset-rich entity, PDVSA will certainly be a target of creditor lawsuits and enforcement actions. Thus, a key driver in any Venezuelan restructuring exercise will be to provide PDVSA with protection from such lawsuits and/or enforcement actions. Otherwise, Venezuela could potentially lose enormous value if PDVSA is carved up as a result of creditors going against PDVSA assets in order to recover on judgments against PDVSA.

With respect to a potential PDVSA insolvency filing, there would be a threshold issue as to whether PDVSA would even be eligible to file for insolvency proceedings under the applicable insolvency-related provisions of Venezuela's Code of Commerce. This becomes tricky in part because, on the one hand, PDVSA is a state-owned entity, one hundred percent owned by the Venezuelan government, that performs a crucial function for the Venezuelan economy, and get, on the other hand, PDVSA is incorporated as an ordinary, plain vanilla Venezuelan private corporation, a so-called *sociedad anónima* (S.A.).

There appears to be a split among Venezuelan lawyers on the issue of whether PDVSA could file for insolvency proceedings under Venezuela's Code of Commerce. There are those Venezuelan lawyers who believe that «SOEs perform public functions, which cannot risk being disrupted by claims or actions brought by creditors», and that therefore an SOE such as PDVSA cannot be subject to an insolvency proceeding<sup>24</sup>. But there are other Venezuelan lawyers such as Roland Pettersson Stolk who believe that «PDVSA, as any other SOE, is liable under Venezuelan law to be subject of either reorganization or bankruptcy proceedings», and thus PDVSA could fall under the insolvency-

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<sup>24</sup> For a discussion of considerations relevant to a possible PDVSA insolvency filing under Venezuelan law and an argument that a PDVSA filing can take place under Venezuela's Code of Commerce, *see*, e.g., Roland PETTERSSON STOLK, «PDVSA's Bankruptcy: A Look from Venezuelan Law, in the Context of a Default», October-November, 2017, p. 9 (available at SSRN: <https://ssrn.com/abstract=3064214>).

related provisions of the Code of Commerce<sup>25</sup>, subject to certain adaptations<sup>26</sup>. Presumably, this debate may well continue as an insolvency filing by PDVSA, in one form or another, would seem to become more of a distinct possibility at some future date as PDVSA'S financial condition continues to deteriorate.

However, even assuming that PDVSA were to be eligible to file for insolvency under the insolvency-related provisions of Venezuela's Code of Commerce, the question arises as to whether the existing statute would be robust or supple enough to deal with the potential complexities of a PDVSA reorganization. Some observers have argued that Venezuela would be best served by having PDVSA file under a special purpose statute crafted to deal with the unique characteristics of PDVSA as an absolutely critical state-owned or public enterprise in Venezuela<sup>27</sup>.

Regardless of whether PDVSA were to file under the existing Venezuelan Code of Commerce or under a newly created statute, there might be questions, as often arise in other emerging markets and developing country jurisdictions, as to whether the particular Venezuelan court and judge assigned the case would have the requisite capacity and independence to handle a potentially incredibly complex case such as a PDVSA insolvency case<sup>28</sup>.

In view of the potential size and complexity of such a case, a PDVSA insolvency would undoubtedly be unlike any other insolvency case previously handled by the Venezuelan courts. It would likely pose truly daunting challenges for the court handling the case since, among other things, there would be no pre-established road map for handling such a case, particularly one involving a state-owned enterprise that is so central to the Venezuelan economy.

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<sup>25</sup> *Id.* at p. 10.

<sup>26</sup> *Id.* at p. 11 (arguing that there might need to be a «series of restrictions on the ability of creditors to seize, operate and/or liquidate its assets»).

<sup>27</sup> For a discussion of a proposal along these lines, *see*, e.g., Mark A. WALKER and Richard J. COOPER, «Venezuela's Restructuring: A Path Forward», March 2019 (available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3361887](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3361887)).

<sup>28</sup> The discussion in this paragraph and the next few paragraphs is based on the discussion in the author's published article, Steven T. KARGMAN, «Shrinking Pie», *The International Economy*, Fall 2019, p. 54.

Moreover, a Venezuelan insolvency case for PDVSA might not operate in isolation from insolvency proceedings outside of Venezuela. For example, Chapter 15 of the US Bankruptcy Code might provide a useful tool for PDVSA in protecting its assets in the US, assuming in the first instance that PDVSA as a state-owned entity would be eligible to avail itself of Chapter 15 relief (which is not completely free from doubt). Chapter 15 provides that US bankruptcy courts can grant so-called recognition to foreign insolvency proceedings and furnish assistance in support of those proceedings, including providing relief to the foreign debtor such as a stay or moratorium against creditor actions in the US.

Yet, a US bankruptcy court may decline to provide recognition of a foreign proceeding (or decline to grant relief in support of the foreign proceeding) if it is not confident, for example, that the foreign proceeding comports with US concepts of due process. Thus, a US bankruptcy court reviewing a petition under Chapter 15 for recognition of a Venezuelan proceeding would want to have a certain level of comfort with a PDVSA proceeding in Venezuela, including how the proceeding has been conducted and whether, for example, it has treated all of the parties fairly.

Chapter 15 contains certain safeguards, such as the so-called public policy exception set forth in Section 1506<sup>29</sup>. Section 1506 authorizes the court to decline to take an action under Chapter 15 if taking that action would be «manifestly contrary to the public policy» of the US, but this public policy exception is supposed to be construed narrowly and applied sparingly by the courts<sup>30</sup>.

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<sup>29</sup> Section 1506 provides as follows: «Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States». 11 USC §1506. This so-called public policy exception is supposed to be narrowly construed, as indicated in guidance from UNCITRAL in connection with the UNCITRAL Model Law on Cross-Border Insolvency (1997), and US courts have, as a general matter, interpreted the public policy exception fairly narrowly.

<sup>30</sup> See note 27 *supra*.

Assuming that the objective is to obtain Chapter 15 recognition in the US for a Venezuelan proceeding, a new Venezuelan government and any new leadership at PDVSA, as well as any other relevant parties, would want to ensure that any insolvency proceeding for PDVSA in Venezuela is conducted in a manner that would be viewed as being acceptable to a court in a Chapter 15 proceeding in light of the text and purpose of Chapter 15. Similarly, any new insolvency law that was designed specifically for a PDVSA insolvency filing would also need to be considered in that same light.

Obviously, the Venezuelan lawyers working on these matters would want to consult with US lawyers who are experienced in cross-border insolvency matters and specifically Chapter 15 to discuss all of the ramifications of a Venezuelan proceeding (or the applicable Venezuelan insolvency law) for a Chapter 15 proceeding.

### *3.3. Economic Recovery –Reviving the Venezuelan Oil Industry–*

It is no secret that the Venezuelan oil industry has deteriorated in a major way in recent years,<sup>31</sup> and its oil-producing infrastructure is currently viewed as being in a state of major disrepair and dysfunction due to years of neglect and lack of capital investment.<sup>32</sup> Oil production has plummeted in recent years, going from a level of 2.5 million barrels per day as recently as 2016 to a level of under of approximately 750,000 barrels per day in recent months, a depressed level of production that has not been seen in many years<sup>33</sup>.

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<sup>31</sup> For a discussion of the state of Venezuela's oil industry and the industry's centrality to Venezuela's economy, see, e.g., Steven T. KARGMAN, «Venezuelan Debt Conundrum», *The International Economy* (Spring 2019). See also Ruth KRIVOVY, «Venezuela: In a Hole, and Still Digging,» *Emerging Markets Restructuring Journal* (Summer 2018), pp. 1-6.

<sup>32</sup> Energy Information Administration (US Department of Energy), «Venezuelan Oil Production Falls to Lowest Level Since January 2003», May 20, 2019 (pointing out that «[t]he number of active oil rigs –an indicator of future oil production– also fell from nearly 70 rigs in the first quarter of 2016 to 24 rigs in the first quarter of 2019») (available at <https://www.eia.gov/todayinenergy/detail.php?id=39532>).

<sup>33</sup> *Id.*

In light of this deterioration of the Venezuelan oil industry, it is widely acknowledged that Venezuela will need billions of dollars –perhaps even tens of billions of dollars, by some estimates– to restore its oil industry. Some of the necessary funding for this may come from the international financial institutions, such as the IMF, World Bank, Inter-American Development Bank, CAF, and so forth. However, funding from those institutions alone may not be sufficient by itself.

Rather, Venezuela will also likely be very dependent on investment from the private sector as well, including from foreign investors and foreign companies that would have an interest in reviving Venezuela's oil-producing capabilities on a commercial basis. Of course, as a threshold matter, a new Venezuelan government will need to make certain that it is comfortable with foreign investment playing such a major role in the redevelopment of Venezuela's oil industry. Further, in light of any potential political sensitivities surrounding the issue of foreign investment in the oil industry, a new government will undoubtedly want to ensure that the public supports such an approach. (Whether the necessary funding comes from the international financial institutions or the private sector, Venezuela will presumably want to undertake its oil exploration and development activities in a manner that is as environmentally sensitive as possible).

In order to attract this type of foreign investment, it is likely, though, that the current Venezuelan legal framework for foreign investment in general and foreign investment in the oil industry in particular will need to be reviewed to see whether that framework is adequate or robust enough to facilitate this new investment. Specifically, Venezuelan lawyers and policymakers will need to consider whether there will need to be changes to Venezuela's existing hydrocarbons law in order to facilitate greater foreign investment in the Venezuelan oil industry<sup>34</sup>.

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<sup>34</sup> Andrés GUEVARA DE LA VEGA and Carlos BELLORIN, «¿Por qué sí hace falta una Nueva Ley Orgánica de Hidrocarburos? (Why Do We Need a New Hydrocarbons Law)», *Prodavinci*, February 27, 2019 (available at <https://prodavinci.com/por-que-si-hace-falta-una-nueva-ley-organica-de-hidrocarburos-1/>).

For example, in the joint venture context, will the hydrocarbons law need to be revised in order to permit majority foreign ownership in joint ventures with PDVSA, something that is now prohibited by current law? And, as Andrés GUEVARA DE LA VEGA and Carlos BELLORIN have argued, will Venezuela's current royalty rates need to be lowered in order to make Venezuela more competitive with other oil-producing countries in the region?<sup>35</sup>

As with any type of foreign investment that a new Venezuelan government will hope to attract, future foreign investors in the oil industry will want greater certainty in the contractual arrangements, especially the dispute resolution provisions in the relevant agreements, that they will enter into with Venezuelan government counterparties, particularly in light of the spate of expropriations that took place under the Chávez regime (including expropriations that took place specifically in the oil industry). A key element in providing such certainty would be affording the parties to the relevant contractual arrangements the possibility of resorting to international arbitration in the event that there is a dispute between the parties.

Venezuela had previously been a party to the ICSID Convention under which international investment disputes between investors and States are handled by an arbitration tribunal under the auspices of the World Bank affiliate, ICSID (the International Centre for the Settlement of Investment Disputes). However, in 2012 under the Chávez regime, Venezuela withdrew from (or, in the technical parlance, «denounced») the ICSID Convention.

Significantly, this withdrawal or denunciation by the Venezuelan government did not affect cases against Venezuela that were then pending at ICSID<sup>36</sup>. There were many such cases that were then pending, and several of them ultimately resulted in very sizeable judgments against Venezuela, such as

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<sup>35</sup> *Id.*

<sup>36</sup> Sergey RIPINSKY, «Venezuela's Withdrawal From ICSID: What it Does and Does Not Achieve», *Investment Treaty News*, April 13, 2012 (International Institute for Sustainable Development) (available at <https://www.iisd.org/itn/2012/04/13/venezuelas-withdrawal-from-icsid-what-it-does-and-does-not-achieve/>).

an ICSID judgment against Venezuela that was awarded to ConocoPhillips in the original amount of \$8.7 billion<sup>37</sup>.

Thus, if a new Venezuelan government aims to regain the trust and confidence of foreign investors (whether in the oil industry or in other sectors of the Venezuelan economy), it will certainly have to seriously consider rejoining the ICSID Convention.

### *3.4. Economic Recovery –Diversifying Venezuela's Economy–*

As is well known, the Venezuelan economy is largely dependent on a single commodity, namely oil. Oil revenues constitute a not insignificant part of Venezuela's GDP, fund a substantial part of Venezuela's national budget, and generate a huge part of Venezuela's hard currency export earnings.

Yet, the Venezuelan economy was not always so much of a «one-trick pony.» Venezuela used to have a fairly productive manufacturing sector in industries such as auto parts, cement, steel, aluminum, and so forth, but notably that was when companies in those industries were privately owned. As noted above, it was essentially not until the expropriations of the Chavez regime in 2007 and thereafter that Venezuela's manufacturing sector fell into marked decline<sup>38</sup>.

While oil will inevitably play an important role in the future of the Venezuelan economy, any new government in Venezuela will have to consider whether it wishes to remain so heavily dependent on a single commodity such as oil, especially a commodity whose price is subject to such wide swings, or whether it wishes to diversify its economy so that there is greater balance in the economy between the oil and non-oil sectors, as was previously the case.

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<sup>37</sup> That judgment was then apparently reduced to \$8.5 billion. «World Bank Tribunal Lowers ConocoPhillips Award for Venezuela Expropriation: Document», *Reuters*, September 2, 2019.

<sup>38</sup> See generally *supra* note 18 and accompanying text.

Certainly, a strategy of economic diversification is not guaranteed to succeed or at least not to achieve success overnight or without encountering obstacles along the way, judging by the prior experience of other developing countries<sup>39</sup>. Nonetheless, unlike a number of other developing and emerging market countries that have pursued strategies of economic diversification, Venezuela at least has a model for what a more diversified economy would like, and that is basically the economy that existed prior to the Chavez-era expropriations.

In other words, for Venezuela, an economic diversification strategy may have something of an element of «back to the future» –i.e., reviving some of the Venezuelan manufacturing industries that existed through the mid-2000s prior to the expropriations of that period. Yet a new Venezuelan government might want to give careful consideration as to which of its prior manufacturing industries have the potential to be competitive in the coming years, so that it can then encourage investment in those particular industries rather than in industries that will not be competitive in the future.

However, policymakers in a new government would also need to consider whether there are any other new industries in which Venezuela could enjoy a comparative advantage in the future. A new government would want to consider encouraging investment in any such new, promising industries.

There could be an additional impetus for Venezuela to pursue a strategy of economic diversification: the concern worldwide about climate change and the major role of fossil fuels in contributing to carbon emissions. Obviously, global concern about these issues could lead to lower demand for fossil fuels going forward, and as a result, just as oil companies will face a very different landscape in the coming years, oil-producing countries such as Venezuela will have to reckon with this new global reality as well.

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<sup>39</sup> For a review of various challenges in national economic diversification strategies, see, e.g., OECD/United Nations, «Economic Diversification in Africa: A Review of Selected Countries» (2011).



A new Venezuelan government and its advisers will need to consider whether there need to be changes in its legal and/or regulatory framework in order to encourage investment by foreign investors (but also by any potential Venezuelan investors) in non-oil sectors of the Venezuelan economy. For example, policymakers will have to consider issues such as the following: Are there an excessive number of permits required from the government to make such investments, particularly as relates to potential foreign investors? Is the process for the granting of work visas for non-Venezuelan employees too burdensome for foreign investors looking to set up or maintain operations in Venezuela?

Further, as mentioned above in connection with the discussion of attracting new investments in the Venezuelan oil industry, Venezuela's rejoining the ICSID Convention would provide foreign investors with additional comfort when investing in non-oil sectors in Venezuela.

### 3.5. *Asset Recovery*

It is widely believed that billions of dollars –possibly tens and tens of billions of dollars– have been improperly diverted from Venezuela's public coffers into the hands of individuals, including reportedly former or current government officials as well as individuals who are associates or relatives of government officials. According to various reports, PDVSA assets in particular have been a major target of opportunity for those Venezuelans seeking to misappropriate assets from Venezuela. In fact, in the summer of 2018, the US Attorney's Office in Miami unveiled a major indictment of a number of Venezuelans who were allegedly engaged in money laundering involving more than a \$1 billion, and at the same time the US Attorney's Office also froze real estate and other assets that were alleged to have been purchased with funds stolen from PDVSA<sup>40</sup>.

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<sup>40</sup> «Feds Freeze Millions in Assets Linked to Stolen Venezuelan Oil Funds Laundered in South Florida», Miami Herald, August 22, 2018. See also Ben BARTENSTEIN, Tiffany KARY, and Alan KATZ, «U.S. Said to Be Closing In on PDVSA-Linked Seizures, Charges», *Bloomberg*, October 25, 2016 (indicating that alleged diversion of funds from PDVSA may have involved approximately \$11 billion). For a separate development regarding funds allegedly diverted from a Venezuelan emergency food program, see Ian TALLEY, «U.S. Issues Sanctions Over Alleged Corruption in

If the funds that have been misappropriated from Venezuela could ultimately be recovered, they could play an important role in providing funding to help with the rebuilding of the Venezuelan economy and Venezuelan society more broadly. Thus, when any new government comes into power, it might be well advised to consider how it could undertake a broad-reaching asset recovery effort so that it can recapture these billions of dollars for the benefit of the Venezuelan people<sup>41</sup>.

Yet, a note of caution is in order since any asset recovery program could take a long period of time –possibly even a number of years– and painstaking efforts before the asset recovery efforts bear significant fruit<sup>42</sup>. Thus, as a matter of prudence and sound planning, any debt restructuring and/or economic recovery plan pursued by a new government should probably not be predicated on achieving a specific amount of asset recoveries and obviously not on achieving such recoveries in a short period of time. Instead, whatever funds are recovered through such efforts should be viewed essentially as an unexpected (but certainly most welcome) windfall.

Any asset recovery program will almost by definition be a multinational effort since the stolen funds were undoubtedly deposited in or transferred

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Venezuela Food Program Under Maduro», *Wall Street Journal*, July 25, 2019. See also Roberto SIMON and Emilie SWEIGART, «What Will Happen When a Corruption Probe Starts in Venezuela?», *Americas Quarterly*, April 29, 2019; Nicholas CASEY, «Jets, Horses and Bribes: How a Venezuelan Official Became a Billionaire as His Country Crumbled», *The New York Times*, November 23, 2018.

<sup>41</sup> For an in-depth discussion of insolvency tools that may be used in asset recovery efforts, see, e.g., Jean-Pierre BRUN and Molly SILVER, «Going for Broke Insolvency Tools to Support Cross-Border Asset Recovery in Corruption Cases» (World Bank, 2020) (available at <https://star.worldbank.org/sites/star/files/going-for-broke.pdf>). For a discussion of a proposal for an IMF-administered trust fund for asset recovery for Venezuela (a so-called «Venezuela Asset Recovery Trust»), see, e.g., Thomas W. LARYEA, «Venezuela's Debt Resolution: Recover the Assets», *Financial Times (Alphaville)*, October 30, 2019.

<sup>42</sup> See, e.g., Cynthia O'MURCHU, «Asset Tracing: Follow the Money», *Financial Times*, August 13, 2014 (discussing the growing interest in asset recovery in developing countries, but also noting the difficulties in effectuating asset recoveries in such cases).

through bank accounts in jurisdictions other than Venezuela and/or laundered into investments such as real estate, art or other high-value assets in foreign jurisdictions. As a first step, Venezuelan lawyers, whether in any new government or in the private sector, will need to work with forensic accountants in trying to trace suspect asset transfers.

Furthermore, a new Venezuelan government and any Venezuelan lawyers advising it will need to coordinate with foreign lawyers on the most efficacious means for recovering these stolen assets given the differing legal systems and legal frameworks in place in the foreign jurisdictions in which stolen assets might be located. In addition, a new Venezuelan government would want to review any mutual legal assistance treaties that Venezuela has entered into with foreign governments and consider what procedural steps it needs to take in order to call on assistance from such foreign governments as part of its asset recovery efforts.

While asset recovery can be a very expensive and time-consuming undertaking, any new Venezuelan government may be able to leverage certain resources from international institutions<sup>43</sup> and/or non-governmental organizations (NGOs) in pursuing asset recovery efforts. Moreover, a new Venezuelan government might wish to consider the possibility of employing lawyers and forensic investigators from the private sector with experience in this field to assist with asset recovery efforts. A new Venezuelan government might consider the possibility of structuring its compensation arrangements with these professionals on a so-called success fee or contingency fee basis (i.e., where fees are not paid unless there is a recovery), thereby limiting the government's out-of-pocket expenditures for its asset recovery program.

## **Conclusion**

If and when a new government comes into power in Venezuela, it will have to address a broad array of monumental challenges with respect to both

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<sup>43</sup> For example, the World Bank has a dedicated program for this purpose known as the Stolen Asset Recovery Initiative (StAR) that operates in conjunction with the United Nations Office on Drugs and Crime (UNODC).

humanitarian/social issues and financial/economic issues. In terms of the financial/economic issues discussed in this article, a new government will have to make some fundamental decisions early on concerning the direction in which it wants to move on major policy matters.

A new government will have to decide issues such as whether it wants to support a program of privatization of state-owned enterprises, and whether it will advocate diversification of the Venezuelan economy so that it is not so heavily dependent on the oil industry. It will also have to decide matters such as whether it will welcome foreign investors playing an important role in the revival of the Venezuelan economy, and whether it will support debt-for-equity exchanges that could transfer ownership stakes in newly privatized enterprises and/or its natural resources to foreign investors/creditors. Furthermore, depending on these policy choices, a new government will have to develop detailed plans and programs for implementing its overall policy objectives.

In sum, whether in connection with these policy choices and/or with the implementing plans and programs, Venezuelan professionals, particularly its lawyers, will play an absolutely critical role in framing the relevant issues and developing pragmatic but yet creative solutions.

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**Resumen:** El autor reflexiona sobre una eventual recuperación económica de Venezuela, la cual pasaría por una reestructuración integral de su deuda externa. En tal sentido, la magnitud de la deuda y los nuevos desafíos que ella implica requerirá de diversas estrategias, así como de un grupo de profesionales altamente competitivos. **Palabras clave:** deuda externa, transición, reestructuración. Recibido: 03-01-20. Aprobado: 30-01-20.