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Venezuela's New Hydrocarbons Regulation

Investors in the Venezuelan oil sector should be aware of the opportunities — but above all, of the regulatory risks the new framework creates. This note sets out that assessment.

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INSTRUMENTS

Regulation to the Organic Hydrocarbons Law; two ministerial resolutions on *government take*

U.S. NEXUS

E.O. 14,373 · OFAC General License 52A

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On July 7, 2026, Venezuela published the Regulation to the Organic Hydrocarbons Law (Decree No. 5,381). That same day, the Ministry of Popular Power for Hydrocarbons published two resolutions defining the sector's fiscal regime, or *government take*: Resolution No. 002/2026, governing the Integrated Hydrocarbons Tax on upgrading, refining, industrialization, commercialization, and specialized oilfield services; and Resolution No. 024/2026, governing the assessment, filing, and payment of the Royalty and the Integrated Hydrocarbons Tax for upstream operators.

These three instruments must be read together. The Regulation repeatedly defers to the "rules" the Ministry would issue on the royalty and the integrated tax — and those rules are precisely the two resolutions.

The analysis of these regulations starts with understanding the goal of the 2026 amendments to the Organic Hydrocarbons Law: to encourage private investment in upstream activities to help rebuild oil production, as PDVSA cannot fund the needed capital expenditures alone. This goal aligns with U.S. policy toward Venezuela, reflected in Executive Order 14,373 of January 9, 2026, and in General License No. 52A from the Treasury Department's Office of Foreign Assets Control (OFAC), which permits transactions with PDVSA that would otherwise be prohibited. According to Article 236.10 of the Venezuelan Constitution, implementing regulations must honor the law's intent, purpose, and rationale — which in this context means providing clearer legal protections for private investors.

The amended statute created two contractual vehicles for private participation in exploration, production, and commercialization. Under the first, the contracting party is a wholly state-owned company — in practice, PDVSA Petróleo, S.A. (PPSA), a PDVSA subsidiary. Under the second, a joint venture contracts with its own minority shareholder. Both are oilfield service contracts: the private investor assumes the entire operation, including its costs and risks, and its compensation depends on the allocation of production. This is the productive participation contract model. Venezuela's production recovery therefore depends on whether private investors can operate effectively under these contracts.

The verdict on the Regulation and the resolutions is mixed. On one hand, the resolutions represent genuine progress over the statute's fiscal indeterminacy: they define the taxable event, the tax base, the rate, deductible and non-deductible costs, the advance payment regime, and the annual return, and they establish a rate-revision mechanism governed by defined thresholds. Article 43 of the Regulation further sets out a schedule of aggregate rates by project type.

On the other hand, the Regulation entrenches a central planning model that vests the Ministry with sweeping, open-ended authority to license, approve, direct, supervise, and control the entire value chain — including the performance of the new oil contracts. Investors' contractual rights are subordinated to the Business Plan and the Commercialization Plan, both of which are subject to ministerial approval. And the penalty regime, by expressly declaring its offenses "illustrative and not exhaustive," injects impermissible legal uncertainty.

> Investors now know, with reasonable precision, *how much they will pay.* What they do not know is how long they will hold the rights on which that payment falls.

In short, the new regulatory framework fails to meaningfully improve the sector's regulatory quality, measured against the incentives required to attract private capital. Given the scale of investment required, the effort needed to rebuild the sector, the failures in critical infrastructure such as electricity, and Venezuela's fragile institutional conditions, the framework should have gone out of its way to create meaningful competitive advantages. It did not. What it delivered instead is a centralized system of administrative controls that may well undermine the protection of investors' economic rights.

Eleven regulatory barriers stand out

MARGIN COLUMN CITES THE GOVERNING PROVISIONS

ONE

Fiscal indeterminacy

Although Article 43 sets the aggregate rate by project type, neither that article nor Resolution No. 024/2026 specifies how the aggregate rate is allocated between the royalty and the integrated tax — two levies resting on different tax bases. Compounding this, Article 44 empowers the Ministry to set project-specific rates. And a regime built on fixed rules creates incentives, amid oil price volatility, for the government to capture the rent.

PROVISIONS

Reg. arts. 43, 44
Res. 024/2026

TWO

A weak economic and financial equilibrium guarantee

While Articles 33 and 34 of Resolution No. 024/2026 constrain ministerial discretion through defined criteria, Article 32 caps rate-revision requests at one every five years and at no more than three over the life of the project. Neither a decision deadline nor any remedy for ministerial inaction is provided. The Article 26 equilibrium guarantee is thus substantially diminished.

PROVISIONS

Res. arts. 32–34
Statute art. 26

THREE

An implicit penalty on international arbitration

Article 33 of Resolution No. 024/2026 excludes risks associated with the execution and recovery of the investment as a qualifying criterion for rebalancing whenever the contract provides for international arbitration. The rule discourages the very dispute-resolution mechanism that OFAC's general licenses require.

PROVISIONS

Res. art. 33
OFAC GL 52A

FOUR

Concentration of all regulatory authority in the Ministry

To the point of establishing a centralized planning system. In practice, the Ministry controls every link in the value chain, from exploration to export, through discretionary powers. No regulatory-impact tools exist to assess these rules. The conduct of oil operations turns not on the terms of the productive participation contract, but on the Ministry's regulatory prerogative. The absence of an independent technical regulator in the amended statute aggravates the risks of this overregulation.

PROVISIONS

Reg., passim
No technical regulator

FIVE

Subordination of contractual rights to the Business Plan

Under Articles 2.35 and 26, it is that document — not the contract — that defines the financial core of the investment. The Ministry retains open-ended powers to intervene in the plan, at the expense of the stability of contractual rights.

PROVISIONS

Reg. arts. 2.35, 26

SIX

No general terms and conditions for oil contracts

The Regulation does not develop the content of the contract between private investors and wholly state-owned subsidiaries under Article 23 of the statute and barely sketches the contract between the minority shareholder and the joint venture, styled an "Operating Agreement." Worse, Article 3 subordinates contractual instruments to the Regulation and technical standards, exposing whatever protections investors negotiate to the Ministry's powers of ordering and limitation. The quality of the productive participation contract can thus be eroded by the regulatory burden flowing from the Ministry's central planning powers.

PROVISIONS

Reg. art. 3

Statute art. 23

SEVEN

Pervasive licensing control over upstream activities

Covering corporate acts, the conduct of the activity itself, exploration, reserve submissions, reservoir delineation, the Business Plan, the agreement with the minority shareholder, the Work Plan, and enhanced and secondary recovery projects. Not one of these controls was streamlined — no deemed-approval rule, no administrative simplification of any kind.

PROVISIONS

Reg. arts. 10, 12

arts. 15–20, 23

arts. 25–32

EIGHT

Centralized control over commercialization

And this one is especially serious. Because the private investor's compensation depends on the allocation of production, preserving the right to market that production is essential. Yet under the Regulation, exports require ministerial authorization and may be conducted only by the operating company, casting undue doubt on the minority shareholder's right to export. The Commercialization Plan may be overridden on grounds of national interest, and the Ministry sets the methodology for export pricing. The right to market production thus derives not from the contract but from a discretionary administrative authorization. That, in turn, may impair the investor's ability to finance operations — through an offtake agreement, for instance — to the extent its right to market is called into question.

PROVISIONS

Reg. art. 80

art. 81

art. 85

NINE

Unduly broad powers of inspection and audit

Article 7 requires that the Ministry be granted unrestricted, permanent access to facilities and information, and Article 93 characterizes the inspection power as permanent and comprehensive. Articles 94–96, 98, 99, and 102 extend those faculties in terms that heighten the risk of arbitrary administrative action.

PROVISIONS

Reg. arts. 7, 93
arts. 94–96
arts. 98, 99, 102

TEN

Violation of the principle of legality in punishment

Articles 112 and 113 expressly declare their offenses illustrative and not exhaustive, contravening Article 49.6 of the Constitution. Add to this the residual ground in Article 118, permitting the revocation of upstream rights for any material breach of obligations, and the open-ended clause in Article 120.5, extending revocation to all permits and authorizations. This scheme undermines the certainty of the contractual rights arising from the new productive participation contract.

PROVISIONS

Reg. arts. 112, 113
arts. 118, 120.5
Const. art. 49.6

ELEVEN

No clarity on governing law

Article 107 of the Regulation restates Article 8 of the statute and permits disputes to be submitted to Venezuelan courts — which collides with paragraph (a)(1) of General License No. 52A. The Regulation is silent on the law governing the contract, a gap that must be cured in the contract itself to avoid the risk of non-compliance with the licenses. And Note 2 to paragraph (a) of the license, by reserving the exercise of regulatory powers to Venezuelan law, casts the full weight of the centralized control enshrined in the Regulation onto these contracts.

PROVISIONS

Reg. art. 107
Statute art. 8
GL 52A ¶(a)(1), n.2

ASSESSMENT

In another institutional setting, these eleven barriers might have a more measured impact. In Venezuela, they degrade regulatory quality and create conditions hostile to the capital investment needed to sustain growth in oil production. Above all, they heighten expropriation risk — particularly intense in Venezuela, given policies that arbitrarily expropriated the contractual rights of private oil investors, with claims that remain unresolved to this day.

What Venezuela needs, within the space for private investment opened by the amended Organic Hydrocarbons Law, is a framework that innovates to reduce regulatory burdens, improves regulatory quality, and creates competitive advantages to attract investment. That is not what happened. Instead, the Regulation reproduces the centralized control mechanisms characteristic of the socialist model — a model the Regulation itself expressly invokes.

To paraphrase the deregulatory policy adopted by the U.S. Government in Executive Order 14,192 of 2025, this new framework imposes an ever-expanding maze of complicated regulations that carries enormous costs, substantially constrains economic growth and the capacity to build and innovate, and ultimately hampers the global competitiveness of Venezuela's oil sector.