

Venezuela

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A. OVERVIEW OF THE REGULATORY STRUCTURE

1. APPLICABLE LAWS AND REGULATIONS

Under Venezuelan law, the provision of investment advice is subject to an authorization requirement. The activities of investment advisers in Venezuela are subject to Venezuelan capital markets legislation, and to rules and regulations enacted by the Venezuelan regulatory agency. Venezuelan regulations are nationwide in scope.

The applicable laws and regulations for investment advisers have been changed significantly in the recent years. In November 2010, the Capital Markets Law (the “Former Law”) was superseded by the Securities Market Law (*Ley del Mercado de Valores*), published in the Official Gazette N° 39.489 of 17 August 2010. As a result, the National Securities Commission (*Comisión Nacional de Valores*), which had been Venezuela’s securities market regulator since 1973, was replaced by the Superintendence (*Superintendencia Nacional de Valores*). The Securities Market Law requires the Superintendence to issue regulations pertaining to the registration and activities of investment advisers. So far, however, no such regulations have been issued. As a consequence, the new regulatory framework for the registration and the activities of investment advisers in Venezuela is not complete. In practice, the Superintendence is currently not reviewing any applications to become a registered investment advisor, whether from individuals or corporations, or from national or foreign persons, and previously submitted applications are not being processed. Up to now, no regulations have been announced that could address the issues which need to be resolved.

In addition, a new State-owned stock exchange, the Bicentenary Public Stock Exchange was created in November of 2010 by the *Ley de la Bolsa Pública de Valores Bicentenario*. The Caracas Stock Exchange, a private forum which started operations in 1947, continues its activities; however, even though there are now two active stock exchanges in Venezuela, the trading of securities on these exchanges is very diminished due to political and economic reasons.

Under the Former Law, the National Securities Commission issued the Authorization Regulations (*Normas Relativas a la Autorización y Registro de los Corredores Públicos de Valores y Asesores de Inversión*), published in the Official Gazette N°39.071 of 2 December

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2008. This chapter only refers to the Authorization Regulations to the extent that they may still be applicable.

2. REGULATED ACTIVITIES

2.1 Meaning of Investment Advice

Under Article 22 of the Securities Market Law, “investment advice” is defined to be the expression of an opinion with respect to securities and their issuers by nationals or foreign persons who have studied such securities and issuers. Venezuelan law does not make a distinction between the provision of discretionary and non-discretionary advice.

This definition of “investment advice” under the Securities Market Law is deficient in several respects. For instance, it is not clear whether the authorization requirement applies to individuals and companies. The wording “who have studied securities and its issuers” could be taken to mean that only individuals, as opposed to legal entities, can be considered investment advisers. However, Article 22 of the Securities Market Law also instructs the Superintendence to “dictate regulations regarding the authorization and the activities of the investment advisers”. And Article 8 of the Securities Market Law, stipulating the powers and duties of the Superintendence, provides that it shall “dictate the regulations according to which legal entities incorporated in the Republic, abroad or individuals dedicated to advising on securities investment may operate within the national territory.” The reference to legal entities, within the attributions of the Superintendence, when taken together with the provisions of Article 22, lead to the conclusion that the definition of investment adviser contained in such Article 22 includes not only individuals but also legal entities.

The definition of “investment advice” contained in Article 22 of the Securities Market Law is very broad and substantially changes the regulations for investment advisers that had been in force in Venezuela. Under the Former Law, and the Authorization Regulations, investment advisers were only required to register if it was their “principal object” to provide investment advice and such advice was to be provided “habitually.” Under the Securities Market Law, however, anyone who provides investment advice in Venezuela, whether publicly or privately, must be authorized by the Superintendence.

2.2 Securities

The term “securities” is defined in Article 16 of the Securities Market Law to include the following:

- (i) financial instruments which represent property or credit rights over the equity of a corporation, short, medium or long term, issued en masse, which have the same characteristics and grant their holders the same rights within their class;
- (ii) derivative instruments, different types of instruments or securities representing an option right for the purchase or sale of securities and futures contracts on securities, where the parties agree to buy or sell a given amount of securities at a predetermined price and date, and generally any other type of instrument whose value is determined and fixed by reference to the value of other assets or group of them; and

- (iii) securities which represent property rights, warranties and other rights or contracts on agricultural products and supplies.

In the case of doubt, the Superintendence can determine which securities are regulated by the Securities Market Law. The Securities Market Law excludes from its application public debt and public credit securities.

B. REGISTRATION PROCESS

Article 22 of the Securities Market Law requires that investment advisers must register with the Superintendence. The authors of this chapter are of the opinion that the registration should be made according to the provisions of the Authorization Regulations, insofar as they do not conflict with the Securities Market Law. However, as stated above, the Superintendence is not accepting requests for registration until it has issued the appropriate regulations. The Superintendence's website provides a link to instructions for registration, which include a form. However, these instructions conform to the regulations which were in force in 2001, long before even the Authorization Regulations were in force.

1. REGISTRATION OF VENEZUELAN ENTITIES AND INDIVIDUALS

The registration requirements apply to legal entities and individuals. With regard to legal entities acting as investment advisers, it is important to note that even though the Securities Market Law does not expressly require it, it is implied that the directors, officers and employees of a legal entity which provides investment advice also need to register if they represent the legal entity and/or provide investment advice on its behalf. In addition, the Authorization Regulations do specify that corporate Investment Advisers must act through individuals who have complied with its provisions, including passing an examination before the National Securities Commission (now the Superintendence).

The Authorization Regulations specify that legal entities acting as investment advisers must act through individuals. Individuals requesting registration must be over 35 years old, have a graduate degree, take and pass an exam with National Securities Commission (now the Superintendence) or obtain a waiver based upon their qualifications obtained abroad.

A subsidiary of an investment adviser must also register, and act through authorized individuals, if it wants to provide investment advice.

2. REGISTRATION OF ADVISERS FROM OUTSIDE OF VENEZUELA

The Authorization Regulations required that only persons who are residents in Venezuela or legal entities which have been incorporated or domiciled in Venezuela may be registered. Specifically, legal entities had to be in the form of a Venezuelan "*sociedad anónima*" (limited liability company), and their exclusive object had to be to provide investment advice. In contrast, the Securities Market Law provides that the Superintendence shall issue regulations for "foreign persons" and "legal entities incorporated abroad" seeking to provide investment advice in Venezuela.

However, until the Superintendence issues such new regulations, the authors of this chapter expect that the registration of a foreign individuals or legal entities incorporated abroad will present practical difficulties. There are no exemptions from registration requirements for investment advisers already registered in another jurisdiction.

3. REGISTRATION FEE

There is a registration fee, which was set by the Superintendence in January 2011, by means of the Regulations regarding Duties and Contributions that must be paid by the Persons under the Control of the Superintendence (*Normas relativas a las tasas y contribuciones que deben cancelar las personas sometidas al control de esta Superintendencia*), published in the Official Gazette N° 39.720 of 25 July 2011. Investment advisers who are individuals must pay 100 tributary units (approximately USD 2,093 at the official exchange rate, which currently is VEF 4.30 per USD); and corporations must pay 200 tributary units (approximately USD 4,186). The tributary unit (the tax unit of Venezuela) changes yearly, in order to adapt to the inflation rate, and as of February 2012 it is set at VEF 90, which is the equivalent of USD 20.93, at the current official rate of exchange.

In addition, investment advisers must pay a “special yearly contribution” to the Superintendence, as established in the same Regulations regarding Duties and Contributions. The special contribution is 100 tributary units for individuals and 1,000 tributary for legal entities. This special contribution must be paid upon registration and then on a yearly basis.

4. LENGTH OF THE REGISTRATION PROCESS

There is no established time frame for the Superintendence to register an investment adviser, or even to reply to its request. In view of the very recent changes in legislation, and given that no new regulations have been issued to implement the Securities Market Law, it is very difficult to provide an estimate.

Please note, however, that the Organic Law of Administrative Procedures (*Ley Orgánica de Procedimientos Administrativos*), published in the Official Gazette N° E 2.818 of 1 July 1981, provides that “the processing and resolution of files” shall not exceed a period of four months. In exceptional cases, this period may be extended for two additional months. In practice, however, this timeline is not followed by the Superintendence.