EXPLANATORY COMMENTS ON THE SCOPE OF THE DRAFT REFORM OF THE VENEZUELAN ORGANIC LAW ON HYDROCARBONS OF JANUARY 2026

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> "*The illusion of the rulers of the outlaw State that we Venezuelans have suffered has been that, with only the text of the laws, decrees, and resolutions they issue, they believe they can change reality; and that illusion seems to have no limits; and the worst is that some actually believe that reality changed just by 'decreeing 'it; just because the law or decree says so!!"* (See Allan R. Brewer-Carías, See ***Allan R. Brewer-Carías, Crónica de una destrucción. Concesión, Nacionalización, Apertura, Constitucionalización, Desnacionalización, Estatización, Entrega y Degradación de la Industria Petrolera,*** Colección Centro de Estudios de Regulación Económica-Universidad Monteávila, N° 3, Universidad Monteávila, Editorial Jurídica Venezolana, Caracas, 2018, pp. 320).

These notes aim to formulate an explanatory comments on the scope of the Draft reform of the Organic Law on Hydrocarbons of 2001 (which was reformed in 2006), approved in Fist Discussion by the National Assembly of Venezuela in January 2026, which, as explained in the Statement of Motives that has circulated along with the Draft, setting aside the ratification of "the sovereignty of the State over the hydrocarbon deposit" which is a principle already in the Constitution (art. 12), has as its fundamental purpose to put an end to the reserve to the State of the oil industry and commerce, that is, to the oil nationalization decreed in 1975, through regulations that tend toward its privatization, and that seek:

(i) to promote "associative formulas that enhance the necessary technical and financial capacities for the exploitation of resources," expanding the "management mechanism of mixed companies and the creation of new modalities of private participation," with which it is proposed to move from a management of the oil industry reserved to the State, to a management of the same, in which the private company can have a predominant and almost total role;

(ii) to give legal rank to what is called "the successful business models of the Anti-Blockade Constitutional Law for National Development and the Guarantee of Human Rights [of 2020], including the Productive Participation Contracts – CPP, where the private operating company 'assumes the integral management at its own cost and risk:'" model according to which "the State does not acquire debts and the operator's remuneration consists of a percentage participation on the fiscalized volumes," thus offering a regulatory framework for an almost total liberalization or privatization of the oil industry, with the object of allowing "the joint development of economic operations aimed at maximizing and diversifying the production of hydrocarbon sector resources, through the attraction of foreign investment," with which it is possible to move from the monopoly of the industry in the hands of PDVSA to the commercialization of hydrocarbons by private companies;

(iii) to "expand the spectrum of private sector participation, 'allowing primary activities to be carried out not only by the State or mixed companies, but also through duly assigned private companies;'" with which an end is sought to be put to the reserve to the State of the hydrocarbon industry and trade conceived in 1975 and modified in 2001;

(iv) to "allow 'private capital, both national and foreign, to play a decisive role under the supervision of the State,'" then being able to have the control of oil management completely in the hands of private companies;

(v) to ensure that "operating companies have tools that guarantee efficiency, transparency, and legal security" favoring "financial, technical, operational, environmental, and commercial processes, transversal and enhancers of industry growth;"

(vi) to also empower "mixed companies to delegate technical and operational management to the minority partner, guaranteeing the application of the best international practices;"

(vii) to recognize "mixed companies the right to direct commercialization of their production quota and to the management of bank accounts in various currencies and jurisdictions, facilitating cash flow and financial operability," thus moving from a centralized control system of currency management to operating companies being able to manage their funds in any currency;

(viii) to guarantee contractors the financial equilibrium of the contracts, that is, "an Equilibrium factor," based on the "optimization of the fiscal regime, which allows the entry of large investment flows for the development of new fields;"

(ix) to grant "flexibility to the National Executive" to reduce the royalty in "projects that require large investments," thus abandoning the rigidity that the royalty has in the Law; and

(x) to increase "legal guarantees for investment in the hydrocarbon sector, incorporating the possibility of resorting to independent mediation and arbitration mechanisms for the resolution of controversies," thus eliminating the exclusive competence of national courts for the resolution of controversies imposed in the 2001 Law.

Now, to understand the scope of the reform of the Organic Law on Hydrocarbons that is proposed with all the above motivations that are in the Statement of Motives, it is essential to review beforehand: (i) the situation of the oil industry before the sanction of the 1999 Constitution, (ii) the regulatory framework of the oil industry in the 1999 Constitution; (iii) the legislative changes that affected the oil industry from 2006.

Only in this way can one effectively understand what is the pursue of the proposed norms incorporated in the Draft Organic Law on Hydrocarbons of January 2026, which are analyzed at the end (iv).

I. SITUATION OF THE OIL INDUSTRY BEFORE THE 1999 CONSTITUTION

In accordance with the provisions of article 97 of the 1961 Constitution, through the Organic Law that reserves to the State the hydrocarbon industry and trade of August 29, 1975,[1] the State reserved to itself for reasons of national convenience, "everything related to the exploration of the national territory in search of petroleum, asphalt, and other hydrocarbons; to the exploitation of their deposits; to the manufacture or refining, transportation by special means and storage; to the internal

1 See *Gaceta Oficial* Nº 1.769, Extr., de 29 de agosto de 1975. See in general, regarding the oil nationalization of 1975, Allan R. Brewer-Carías (Editor y director), *Régimen Jurídico de las nacionalizaciones en Venezuela. Homenaje del Instituto de Derecho Público al profesor Antonio Moles Caubet*, *Archivo de Derecho Público y Ciencias de la Administración,* Vol. VIII (1972-1979), Instituto de Derecho Público, Universidad Central de Venezuela, Caracas, 1981.

and external trade pr commercialization of the exploited and refined substances, and to the works that their handling requires" (Art. 1).[2]

Through that *publicatio,* it can be said that a legal monopoly was established in favor of the Nation over the oil industry, which had to be managed exclusively through entities owned by the Republic (art. 5). The consequence of the Reserve Law was the extinction of the hydrocarbon concessions that existed at that time, and in addition, the obligation imposed on the concessionary companies that operated the industry, to transfer ownership of them to the State, for which special rules were established regarding the expropriation procedure (art. 13 et seq.).

The Law provided that the Executive could create the companies it deemed necessary for the regular and efficient development of the reserved activities, with the legal forms it considered convenient; and the attribution to one of the companies of the functions of coordination, supervision, and control of the activities of the others, being able to assign it the ownership of the shares of any of those companies; resulting in the creation of Petróleos de Venezuela S.A. (PDVSA), through Decree No. 1,123, of August 30, 1975,[3] to which all those formed with the old concessionary companies became dependent as subsidiary companies.[4] In this way, after more than fifty years of oil exploitation through the concession system, from 1975 the Venezuelan State began the difficult task of leaving its position as rentier, and assuming that of entrepreneur in an industry that is moreover complex, which it assumed successfully to the point that a decade later, from 1985, Petróleos de Venezuela S.A. (PDVSA), was already considered the leading company in Latin America.[5]

The Nationalization Law, however, when establishing the reserve to the State, in its article 5 allowed the possible participation of private capital in the industry,

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2 See R. Duque Corredor, *El derecho de la nacionalización petrolera,* 1978; and also, Instituto de Derecho Público, *Archivo de Derecho Público y Ciencias de la Administración,* Vol. III. *El Régimen Jurídico de las Nacionalizaciones en Venezuela,* 2 Tomos, Caracas, 1981.

3 See in *Gaceta Oficial* Nº 1.770, Extra., of 30 August 1975. The decree of creation if the state own company was modified by Decreto Nº 250, del 23 August 1979, in *Gaceta Oficial* Nº 31.810, del 30–8–1979.

4 See Allan R. Brewer–Carías, "Aspectos Organizativos de la Industria Petrolera Nacional en Venezuela" en *Archivo de Derecho Público de Ciencias de la Administración,* IDP–UCV, Vol. III, Tomo 1 (1972–1979), Caracas, 1981, pp. 407–492. See also in general, on the State own enteprise: Allan R. Brewer-Caías, *Estudios sobre Petróleos de Venezuela S.A. y la Industria Petrolera Nacionalizada (1974-2021),* Segunda Edición Ampliada, Editorial Jurídica Venezolana ,2021.

5 See the informationien *El Universal,* Caracas, 13–12–81, p. 1–13; *El Universal,* Caracas, 15–10–82, p. 1–14; *El Nacional,* Caracas; 13–12–82, p. D–5; *El Diario de Caracas,* Caracas, 9–12–84, p. 28; y *El Nacional,* Caracas, 14–2–85, p. A–l.

through two contractual modalities: the Operating Agreements and the Association Agreements that could be established with private companies. The former did not affect in any way the reserve or the very essence of the activities attributed to the State, and all those that the nationalized oil companies considered necessary for the better realization of their activities could be subscribed; and the latter, on the other hand, allowed the State to associate with individuals to carry out the reserved activities, through mixed companies or joint ventures subject to state control, which required the prior intervention or control of the legislative body so that they could be subscribed.

In that framework, almost ten years later, in 1994, the National Executive presented to Congress for its prior authorization, in accordance with what was regulated in the aforementioned article 5 of the Organic Law of Nationalization,[6] the terms and conditions for the "conclusion of the Association Agreements for the exploration at risk of new areas and the production of hydrocarbons under the shared profits scheme;"[7] Association Agreements, considered by the Supreme Court of Justice as national public interest contracts or administrative contracts, in which the constitution of a Corporation as Mixed Company in Venezuela was due to be incorporated, in which the PDVSA Subsidiary had to own 35% of the share capital and the private Investors 65%; and it was also expressly regulated, in accordance with the Constitution, the solution of controversies through international arbitration.

In that framework and others approved by Congress, in the following years, between 1994 and 1997, several rounds of negotiations were held for the assignment and creation of associations, originating what were the following Association Agreements that gave rise to the so-called *Apertura Petrolera* (Oil Opening):

First, the so-called Strategic Associations for operations in the Orinoco Oil Belt, which were the following: *Petrozuata, S.A*., in association with *ConocoPhillips; Sincrudos de Oriente, S.A. (Sincor, S.A.)* in association with *Total* and *Statoil; Petrolera Cerro Negro, S.A.,* in association with *Exxon Mobil* and *British*

6 The norm provided that: "The prior authorization of the Chambers in joint session shall be required, under the conditions they set, once they have been duly informed by the National Executive of all the pertinent circumstances." See ien *Gaceta Oficial* Nº 1.769 Extra. de 29 August 1975.

7 See in *Gaceta Oficial* N° 35.754 of 17 JUly 1995. See Allan R. Brewer-Carías, "El régimen de participación del capital privado en las industrias petrolera y minera: Desnacionalización y regulación a partir de la Constitución de 1999", en *VII Jornadas Internacionales de Derecho Administrativo Allan R. Brewer-Carías, El Principio de Legalidad y el Ordenamiento Jurídico-Administrativo de la Libertad Económica,* Caracas noviembre 2004. Fundación de Estudios de Derecho Administrativo FUNEDA, Caracas Noviembre, 2004 pp. 15-58.

Petroleum; and *Petrolera Hamaca, C.A*. (*Petrolera Ameriten*) in association with ConocoPhillips and *Chevron*.

Second, the associations constituted for Risk Exploration and Shared Profits projects that were the following: in the Gulf of Paria West in association with *ConocoPhillips*, *Eni Venezuela B.V* and *OPIC Karimun Corporation*; in the Gulf of Paria East, in association with *ConocoPhillips*, *Inelectra, Eni* and *OPIC Karimun Corporation*; and in La Ceiba, in association with Exxon Mobil and Petro-Canadá.

In addition, the Strategic Association authorized in 2001 must be mentioned, for the production of Bitumen, design, construction and operation of a natural bitumen production and emulsification module for the elaboration of Orimulsion, which was *Orifuels Sinoven, S.A., (Sinovensa*), in association with C*hina National Petroleum Corporation* – CNPC Services de Venezuela and *PetroChina Fuel Oil Company.*

By the time the 1999 Constitution entered into force, all the association agreements of the oil opening were in full execution.

II. REGULATORY FRAMEWORK OF THE OIL INDUSTRY IN THE 1999 CONSTITUTION

In 1999, the National Constituent Assembly sanctioned the 1999 Constitution, in which the constitutional framework of the oil Industry was established, mounted on the following normative pillars:

First, the declaration of State ownership over hydrocarbon deposits, by establishing article 12 of the 1999 Constitution, that mining and hydrocarbon deposits, whatever their nature, existing in the national territory, under the territorial sea bed, in the exclusive economic zone and on the continental shelf, are public domain goods, that is, they belong to the Republic, of inalienable and imprescriptible character.[8]

This, moreover, has been the principle that has always existed throughout republican life, since when Simón Bolívar, as President of the Republic of Colombia (which then included the territories of Venezuela), issued in Quito the Decree of October 25, 1829, ordering the application of the Ordinances on Mining of New Spain, which declared that "the mines of any class, correspond to the Republic."

8 In this form, constitucional rank was given to what was provided en the Mining Law (art. 2) (*Gaceta Oficial* Nº 5382 de 28-09-99) and in the Organic Law of Gaseuse Hydrocarbons (art. 1º) (*Gaceta Oficial* Nº 36.793 de 23-9-99). See our proposal on this matter in Allan R. Brewer-Carías, *Debate Constituyente (Aportes a la Asamblea Nacional Constituyente),* Tomo II, Fundación de Derecho Público, Editorial Jurídica Venezolana, Caracas 1999, pp. 35 y 39.

Second, the attribution to the organs of the National Power of the competencies related to the regime and administration of mines and hydrocarbons (article 156.16).

Third, that "the State reserves, through the respective organic law, and for reasons of national convenience, the oil activity and other industries, exploitations, services and goods of public interest and of strategic character" (art. 302). With this provision, whose origin was in the proposal for constitutionalization of the regime of the nationalization of the oil industry of 1975[9] in substitution of article 97 of the 1961 Constitution;[10] what was achieved was the opposite effect of moving away from the reserve to the State as it had been established in article 5 of the Nationalization Law,[11] by referring to the "***respective organic law***" to fix its scope,[12] which, therefore, like any law, can be changed, even eliminating the reserve or reducing it to the minimum.[13] And so it was how the door began to be opened for

9 See Gastón Parra Luzardo, *La Constituyente. Renacer de una esperanza ¿utopía?,* Caracas, 2002, pp. 45, 109 y ss., y 142 y ss.

10 For our part, I gave my disent vote regarding Article 302 of the Constitution, proposing instead to retain the text of Article 97 of the 1961 Constitution, considering that "Constitutional reserve to the State of certain goods and services are not convenient for the flexible constitutional regime that the economy requires, which must be done by law. It makes no sense to constitutionally reserve the oil industry, when the gas industry is in the process of being denationalized."See Allan R, Brewer-Carías, *Debate Constituyente (Aportes a la Asamblea Nacional Constituyente),* Tomo III, Editorial Jurídica Venezolana, Caracas 2000, pp. 121 ff.; Allan R, Brewer-Carías, *Mis Aportes a la Constitución de 1999. Con las propuestas, observaciones y votos salvados negativos formulados durante los debates de la Asamblea Nacional Constituyente de 1999***,** *Colección de* Crónicas constitucionales para la memoria histórica, No 1, Biblioteca Allan R. Brewer-Carías, Universidad Católica Andrés Bello, Caracas 2023, 539 ss.

11 See the critics to this provision and the comments on the scope of what aquired constitutional rank , in Isabel Boscán de Ruesta, *La actividad petrolera y la nueva Ley Orgánica de Hidrocarburos,* Funeda, Caracas 2002, pp. 149 y ss.

12 Those principles are, as pointed out by Isabel Boscán de Ruesta, first, that the reserve was not conceived as an absolute state monopoly to the exclusion of the private sector; and secondly, the pyramidal system structured for the national oil administration. See in *La actividad petrolera y la nueva ley Orgánica de Hidrocarburos,* cit., p. 149.

13 Consequently, according to the text of the provision, any change in the Organic Law that extinguish or reduce the scope of the reserve to the State, would be in accordance with the Constitution. Nonetheless, see on the subject, the discusión in: Juan Carlos Balzan, "La ordenación constitucional de la actividad petrolera n Venezuela," en *Libro Homenaje al profesor Eugenio Hernández Bretón,* Academia de Ciencias Políticas y Sociales, Editorial Jurídica venezolana, Caracas 2019, pp. 1699 -1719; and in *Juan Cristóbal Carmona Borjas*. "Tratamiento constitucional de la actividad petrolera en Venezuela," in Rafael Badell Madrid, Cecilia Sosa Gomez, Miguel Monaco (coordinadores), *Perspectivas y desafíos del Estado constitucional de derecho, Libro homenaje al 50° aniversario del Instituto de Investigaciones*

the denationalization of the oil industry, which materialized immediately, apart from with the Organic Law on Gaseous Hydrocarbons (Decree-Law No. 310 of September 12, 1999);[14] with the Organic Law on Hydrocarbons (Decree-Law No 1510 of November 2, 2001),[15] which ended up expressly repealing the Oil Nationalization Law of 1975.[16]

Fourth, the declaration that the State can only be the holder of all the shares of Petróleos de Venezuela S.A. created in 1975, or of the entity created for the management of the oil industry, for reasons of economic, political and national strategy sovereignty (art. 303).

Fifth, that, on the other hand, can be in the hands of private companies, the shares of the other oil companies "subsidiaries, strategic associations, companies and any other that has been constituted or is constituted as a consequence of the development of businesses of Petróleos de Venezuela S.A." (article 303). In this way, the principle of the reserve to the State that was in the 1975 Nationalization Law was eliminated, by allowing the shares of all the State operating companies of the nationalized oil industry to be sold to the private sector.

And sixth, in the regulation of general norms on the regime of concessions for the exploitation of natural resources owned by the Nation, (articles 113, and 156.16); of the ***parliamentary control of national interest contracts through prior authorization*** of those subscribed with foreign companies not domiciled in the country, or through subsequent ***approval*** when the Law establishes it (art. 150), as in hydrocarbon matters it was provided ***for mixed company contracts*** in the Organic Law of 2001; and on ***environmental rights*** (article 127 et seq.) with importance in cases of exploitation of natural resources such as mining and hydrocarbons.[17]

In this normative framework, the aforementioned Organic Law on Hydrocarbons of 2001 was issued, in which it can be said that there was a reduction in the scope of the activities of the oil industry reserved to the State, which remained concentrated

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Jurídicas de la Universidad Católica Andrés Bello, Universidad Católica Andrés Bello, Academia de Ciencias Políticas y Sociales, Caracas, 2025.

14 Véase en *Gaceta Oficial* Nº 36.793, 23 September 1999.

15 Véase en *Gaceta Oficial* Nº 37.323, 13 November 2001.

16 Gaceta Oficial Extra., No 1.769, 29 August 1975.

17 See in general Fortunato González Cruz, "El ambiente en la nueva Constitución venezolana", en *El Derecho Público a comienzos del siglo XXI. Estudios homenaje al Profesor Allan R. Brewer-Carías,* Tomo III, Instituto de Derecho Público, UCV, Civitas Ediciones, Madrid, 2003, pp. 2917-2923; Germán Acedo Payares, "La Constitución de la República Bolivariana de Venezuela de 1999 y los denominados 'Derechos Ambientales", in *El Derecho Público a comienzos del siglo XXI. Estudios homenaje al Profesor Allan R. Brewer-Carías,* Tomo III, Instituto de Derecho Público, UCV, Civitas Ediciones, Madrid, 2003, pp. 2925-2978.

in the Organic Law on Hydrocarbons only to what refers to primary activities; to the activities carried out in the refineries existing at the time the Organic Law was issued; to the external and internal trade activities of natural hydrocarbons; and the external and internal commercialization activities on the derived products whose commercialization is reserved to the State by Decree.

Regarding the reserved primary activities, however, the Organic Law established that they, in addition to by the State and its companies, could also be developed with private capital participation through mixed companies or joint ventures, in which the State would have a majority participation that would grant it share control (articles 33 to 37 of the LOH), and for whose constitution the Law required the approval of the National Assembly. This implied that private companies could participate in the realization of primary activities by forming part –as shareholders– in a mixed company, even though the shareholding participation must always be less than 50% of the capital.

The consequence of the above was then that since January 1, 2002, new Association Agreements could not be signed based on the Oil Opening regime, and as for those that had been subscribed from 1994, as well as regarding the Operating Agreements with State companies that were subscribed, since the new Organic Law on Hydrocarbons of 2001 does not and could not have retroactive effects, the same continued in force in the contractual terms according to which they had been subscribed, in accordance with the Framework of conditions authorized by Congress from 1994.

III. THE LEGISLATIVE CHANGES THAT AFFECTED THE OIL INDUSTRY FROM 2006

However, from 2006 there was a radical change in policy consisting on the elimination of private capital participation in the industry that had been possible in accordance with the contracts subscribed before 2001, which was accomplished through four legislative instruments:

The first, by the sanctioning of the Law on Regularization of Private Participation in the Primary Activities *Provided for in Decree No. 1,510 with Force of Organic Law on Hydrocarbons* of April 18, 2006,[18] which provided for the

18 See in *Gaceta Oficial* Nº 38.419, 18 April 2006. See *Allan R. Brewer-Carías, Crónica de una destrucción. Concesión, Nacionalización, Apertura, Constitucionalización, Desnacionalización, Estatización, Entrega y Degradación de la Industria Petrolera,* Colección Centro de Estudios de Regulación Económica-Universidad Monteávila, N° 3, Universidad Monteávila, Editorial Jurídica Venezolana, Caracas, 2018, pp 254 ss.

extinction, that is, the anticipated unilateral termination of the Operating Agreements that then existed;

The second, *Decree-Law 5200, Law on Migration to Mixed Companies of the Orinoco Oil Belt Association Agreements, as well as the Risk Exploration and Shared Profits Agreements*, of February 2007,[19] which provided for the anticipated unilateral termination of the Association and Risk Exploitation Agreements that existed and that had been subscribed between 1993 and 2001, however providing, in the latter case, the possibility that said association agreements could be converted into mixed companies with State capital in more than 50% of the share capital (Arts. 22 and 27 to 32 LOH); and

The third, the *Law on the Effects of the Migration Process to Mixed Companies of the Orinoco Oil Belt Association* Agreements, as well as the Risk Exploration and Shared Profits Agreements, of October 2007,[20] which provided for the "confiscation" of the interests, shares, participation and rights of the companies that formed part of said Agreements and Associations, if they decided not to migrate to the referred mixed companies. This gave rise to multiple arbitration demands with catastrophic consequences due to the condemnation for patrimonial responsibility against the Republic and the State Oil Companies for tens of millions of dollars.

And the fourth, *Organic Law that reserves to the State goods and services connected to the primary activities of Hydrocarbons*" of May 2009,[21] which reserved to the State, for its "strategic character," "the goods and services, connected to the realization of the primary activities provided for in the Organic Law on Hydrocarbons" (Art. 1), that is, the water, steam or gas injection services; the gas compression services; and the services linked to the activities in Lake Maracaibo, likewise with catastrophic confiscatory effects for the entire Zulia region.

What followed was a process of acute politicization of the oil industry that was already totally nationalized, originating a progressive degradation of state companies, until entering a situation of total lack of transparency and opacity, which led to the sanction by the National Constituent Assembly of 2017, among others, of the following laws:

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19 See in *Gaceta Oficial* Nº 38.623, 26 February 2007. See *Allan R. Brewer-Carías, Crónica de una destrucción. Concesión, Nacionalización, Apertura, ...,* op. cit, pp 255 ss.

20 See in *Gaceta Oficial* No. 38.785, 8 October 2007. See the comments in: *Allan R. Brewer-Carías, Crónica de una destrucción. Concesión, Nacionalización, Apertura, ... op. cit,* pp. 262 ss

21 See in *Gaceta No* 39.173, 7 May 2009. See the comments in: en *Allan R. Brewer-Carías, Crónica de una destrucción. Concesión, Nacionalización, Apertura, ... op. cit,* pp. 2t2 ss

First, the *"Constitutional Law against economic war for rationality and uniformity in the acquisition of goods, services and public works,"* of January 2018,[22] through which it partially and tacitly reformed the Public Contracting Law of 2014, totally eliminating the transparent process of contractor selection, with main effects in the national oil industry, in which all bidding process was eliminated; [23] providing that the regime applicable to State companies should be regulated in a "special regulation."

Accordingly, this was established for the companies of the oil industry through Decree No. 3,368 of April 12, 2018,[24] establishing a "special and transitional regime for the operational and administrative management of the national oil industry," assigning to the Ministry of Petroleum competence to: Create, suppress or make modifications to the companies of the public petroleum sector, including PDVSA, and its subsidiary companies; 2. Create, suppress, modify or centralize direction bodies, management or procedures in certain companies, or carry out their standardization for a group of them; 3. Form and regulate one or several conglomerates of public sector petroleum companies, with a view to the needs of increasing the efficiency of the sector and in accordance with the specialized legislation in the matter; 4. Set, suppress, modify or centralize attributions, managements or procedures in determined companies, or carry out their standardization for a group of them; 5. Establish general norms for the compliance of all public companies of the petroleum sector, or groups of them; 6. Create, suppress, modify or centralize contracting commissions, based on categorization criteria based on the specificities of the procedure, of the goods or services required, or of characteristics proper to the national or international markets of certain products; 7. Establish norms and procedures for registration, inscription, contracting and suspension of clients and suppliers; or proceed directly to the suspension of the registration or inscription through motivated act, when from the results of the evaluation of the client or supplier, or the continuity of its contracting suppose a risk to the patrimony of the company, or to its operability6; 8. Establish norms and

22 See in *Gaceta Oficial* No. 41.318, 11 January 2018. See Allan R. Brewer-Carías, *Crónica de una destrucción. Concesión, Nacionalización, Apertura*, …, *op. cit,* pp 279 ss.

23 See the comments in: Allan R. Brewer-Carías, "La institucionalización de la cleptocracia en Venezuela: la inconstitucional reforma tácita del régimen de contrataciones públicas, y la inconstitucional eliminación, por decreto, de la licitación para la selección de contratistas en la industria petrolera, y de la nacionalización de las actividades auxiliares o conexas con la industria," New York, 18 de abril de 2018, en http://allanbrewercarias.com/wp-content/uploads/2018/04/182.-Brewer.-doc.-Institucionalizaci%C3%B3n-Cleptocracia.PDVSA_.pdf.

24 See in *Gaceta Oficial* Nº 41.376, 12 April 2018. See Allan R. Brewer-Carías, *Crónica de una destrucción. Concesión, Nacionalización, Apertura*, …, *op. cit*, 284 ss. y 291 ss.

special contracting procedures by category of products, goods or services; 9. Order the modification of the social statutes of the public companies of the petroleum sector, their procedure manuals, internal norms and other instruments of internal government"(art. 4). [25]

As José Ignacio Hernández commented, "under this decree, PDVSA subscribed 'petroleum service contracts', transferring to private investors the exercise of petroleum activities exclusive to PDVSA Petróleos S.A. and mixed companies. Subsequently, the equally unconstitutional decree n° 4.131, of 2020, again authorized PDVSA to subscribe non-provided contracts in the LOH.[26]

Second, the "Anti-blockade Law for national development and the guarantee of human rights", of October 8, 2020," [27] issued with the purpose of obtaining "additional resources" (art. 18), through the implementation of a "change" of economic policy consisting of destatizing, denationalizing and privatizing indiscriminately, and in secret, the economy, and carrying out new financing public negotiations, to supposedly meet needs in the country; but all this, subverting totally the legal order.

For this, the text of the Law was expressly declared as of "preferential application," over all laws, "of public order and of general interest," and of obligatory application by all territorial levels of government, and by all persons (art. 2); regulating a power without limits so that the National Executive can "inapplicate" in specific cases the norms of legal rank that it deems necessary to pursue the purposes of the Law (art. 19). Consequently, the Law authorizes the National Executive to decide in specific cases that an organic law or any other law

25 Véase sobre este Decreto No 3.368,12 April 2018. See the comments ofJosé Ignacio Hernández G., who consider the Decree as inconstitucional, in: *La privatización de PDVSA y la destrucción del Petro-Estado venezolano*, *cit.,* p. 260. See also Sheraldine Pinto y Ricardo Colmenter, "Régimen especial y transitorio para la gestión operativa y administrativa de la Industria Petrolera Nacional," available at: https://entraconsulting.com/wp-content/uploads/2020/02/Publications-Regimen-especial-y-transitorio-para-la-gestion-operativa-y-administrativa.pdf

26 See José Ignacio Hernández G., *Comentarios Preliminares al Proyecto de Reforma de la Ley Orgánica De Hidrocarburos del 22 de enero de 2026*, 22 enero 2026, p. 4, avaiulable at: h ttps://www.joseignaciohernandezg.com/documents/comentarios-preliminares-al-proyecto-de-reforma-de-la-ley-organica-de-hidrocarburos-de-22-de-enero-de-2026/; aand in his book: *Sanciones económicas y nuevos contratos petroleros en Venezuela (El contrato de participación productiva), Editorial Jurídica Venezolana, Caracas, 2025,*, p.110.

27 See in *Gaceta Oficial* No.6.583 Extra., 12 October 2020. See my critics to this Law in Allan R. Brewer-Carías: **"**La Ley Antibloqueo: una monstruosidad jurídica para desaplicar, en secreto, la totalidad del ordenamiento jurídico," en *Boletín de la Academia de Ciencias Sociales y Políticas*, No 161, Julio diciembre 2020, Homenaje al Dr. José Andrés Octavio, Caracas 2021, pp. 1499-1520.

does not apply, as well as the regulations and other norms of sublegal rank, whose application it deems counterproductive to comply with the purposes of Law.

And all this, in a framework of total absence of transparency, by providing not only to inapplicate the laws on bidding and public contracting (arts. 21 and 28), but that all "the procedures, acts and records carried out on the occasion of the implementation of some of the measures" established in the Law that "suppose the inapplicability of norms of legal or sublegal rank," are declared "***secret and reserved***" (art. 42).

In that framework, precisely, an opaque modality of contracting in the oil industry was developed, to allow the participation of private companies outside of what was provided for in the Organic Law on Hydrocarbons, then known as "shared service agreements" (ASC), or "productive service agreements" (ASP), similar to production sharing contracts;[28] now expressly defined in the Draft reform of the Organic Law on Hydrocarbons of 2026, as "***Productive Participation Contracts***."

Said contracts, together with "other contractual models" developed under the umbrella of the secrecy of the Anti-Blockade Law, are now proposed to be incorporated into the reform of the Organic Law, through a Third Transitional Provision, in which it is affirmed that said contracts were developed "under the umbrella of the Anti-Blockade Constitutional Law for National Development and the Guarantee of Human Rights," thus seeking to "regularize" their illegality, with the declaration that "they will maintain their full validity and legal efficacy, in the terms and conditions contractually provided for," (art 16), but without providing in any way how they fit into what is now sought to be regulated in the Draft reform.

Regarding the laws issued since 2006, the Draft Organic Law on Hydrocarbons of 2026, in addition (art. 13), proposes to add a Repealing Provision, through which the laws that confiscated the Operating Agreements in 2006 and the services connected with the oil industry in 2009 would be partially repealed, as follows:

First, the Law on Regularization of Private Participation in the Primary Activities provided for in Decree N° 1.510 with Force of Organic Law on Hydrocarbons (Official Gazette N° 38.419 of April 18, 2006), through which the anticipated unilateral termination of the Operating Agreements that then existed was provided for; and

Second, the Organic Law that reserves to the State goods and services connected to the primary activities of Hydrocarbons (Official Gazette N°39.173 of

28 Analyzed by José Ignacio Hernández en su libro: José Ignacio Hernández G., José Ignacio, *Sanciones económicas y nuevos contratos petroleros en Venezuela (El contrato de participación productiva)*, *cit.,* pp. 115 ff.

May 7, 2009), which provided for the confiscation of the goods services connected to the primary activities, which affected particularly the Zulia region around Lake Maracaibo.; and

Third, in addition, a provision of general repeal regarding "any other Law that collides with this Law."

IV. THE DRAFT ORGANIC LAW ON HYDROCARBONS OF JANUARY 2026

In January 2006, with the object of "regularizing" the opacity that characterized the process of "privatization" of the oil industry developed, without adherence to secure legislation, without control and in secret, under the umbrella of the Anti-Blockade Law of 2020, the Draft Organic Law on Hydrocarbons approved in First Discussion in January 2026, in accordance with the motives indicated at the beginning of these comments, included in the *Statement of Motives*, and setting aside the rhetoric and remembrance, with praises, of the destructive policies that ended with the oil industry, which now wants to be remade, has as its fundamental purpose as said, to put an end to the reserve to the State of the oil industry, that is, to the oil nationalization decreed in 1975.

This is aimed through a set of regulations that affect the following eight aspects of the provisions of the Organic Law on Hydrocarbons, to which we want to refer: 1. The principles related to the oil industry; 2. The business forms for oil exploitation; 3. The transfer of the right to execute primary activities; 4. The regime of mixed companies; 5. The regime of contracts for the development of primary activities with private companies domiciled in the country, as operating companies; 6. The fiscal regime of the oil industry: royalties and the extraction tax; 7. The hydrocarbon commercialization regime; and 8. The regime for the solution of controversies and arbitration.

1. Principles that must govern the development of the oil industry

The first reform refers to Article 1 of the Law, which is reflected, first, in the definition of its object, which is expanded, by now indicating that it consists of "regulating everything related to the exploration, extraction, collection, transportation, storage, processing, upgrading, refining, industrialization, commerciali-zation, conservation and integral use of hydrocarbons."

And second, in adding to the norm the declaration of the principles that must guide the fulfillment of said object, which must be carried out:

"under the principles of energy sovereignty, public domain of the deposits, progressive maximization of rent, legal security, contractual transparency, environmental protection and adaptation to the energy transition."

Principles that, of course, such as legal certainty and contractual transparency, are not achieved by simply enacting a law.

2. The new business forms for oil exploitation and the end of the reserve to the State of the oil industry and the end of the reserve to the State of the industry and trade of hydrocarbons

The second reform that is proposed in the Draft (*modifies article 22, which becomes article 23*), refers to the expansion of the companies that can carry out the primary activities of hydrocarbons (which are regulated in article 9 of the Law "related to the exploration in search of deposits of the hydrocarbons included in this Law, to the extraction of them in natural state, to their collection, transportation and initial storage"), proposing that they can now be carried out:

"1. Directly by the National Executive or through companies of exclusive ownership of the Republic;

2. By mixed companies in which the Republic owns a majority participation that grants it share control;

3. By private companies domiciled in the Bolivarian Republic of Venezuela, within the framework of contracts entered into with companies of exclusive ownership of the Republic or its subsidiaries.

The companies that dedicate themselves to the realization of primary activities will be operating companies."

With the proposed reform, which only ensures the State the share control of mixed companies (but not the control of management), within the companies that can be operators in the realization of primary activities (which before were reserved to the State, its companies and mixed companies), are included private companies domiciled in the country, through contracts that can concluded with companies of exclusive ownership of the Republic or its subsidiaries. With this provision, it can be said that an end is put to the reserve to the State of the industry and trade of hydrocarbons that was decreed in 1975, and adjusted in 2001.

With this reform, it can be allowed for the industry to even be completely operated by private companies domiciled in the country, through public contracts concluded with State companies, for the time determined in them, through which the company assumes the integral management of the primary activities at its exclusive cost, account and risk, reminiscent of the regime of the former Association

Agreements or Strategic Associations established in the Oil Opening initiated in 1994. Those companies are going to be able to even commercialize directly the product of the operation, with clauses in which the economic equilibrium of the operation by the private company is guaranteed.

As José Ignacio Hernández observed, in short, from the text of the Draft reform it is deduced "that the oil contracts that the reform introduces are petroleum service contracts, through which the public operating companies transfer to the private investor the exercise of the activities of exploration, production and, eventually, commercialization, who assumes the operation expenses and capital and, with it, the risk."[29]

It is to be highlighted from the proposed regulation, the requirement that the companies that can act as operators and carry out primary activities, ***must always be domiciled in the country,*** not being able to celebrate said contracts with foreign companies not domiciled in Venezuela, and neither, of course, with foreign official entities, not even with the prior legislative authorization that regulates article 150 of the Constitution.

3. The regime of the transfer of the right to execute primary activities

For the companies authorized to act as operators in the primary activities to be able to carry them out, the Law provides for the need for the Executive to transfer to them, by Decree, "the right to exercise primary activities."

With the proposed reform (*Article 4. Modifies article 24, which becomes article 25*) having expanded the companies that can act as Operators, what is sought is to ***reduce the transfer of the right to execute the primary activities, only to the first two (State companies and mixed companies***, but not to private companies domiciled when they enter into contract with State companies.

In the reform, the provision that the Executive, can transfer to the State companies and mixed companies: "the ownership or other rights over movable or immovable goods of the private domain of the Republic, required for the efficient exercise of such activities," was preserved. The National Executive "can also revoke those rights when the operators do not give fulfillment to their obligations, in such a way that prevents achieving the object for which said rights were transferred."

On the same matter of the transfer of the right to execute primary activities, the Reform also seek to include (*Article 8. Modifies article 36, which becomes article*

[29] See José Ignacio Hernández G,, *Comentarios Preliminares al Proyecto de Reforma de la Ley Orgánica De Hidrocarburos del 22 de enero de 2026*," 22 enero 2026, p. 8, available at: h ttps://www.joseignaciohernandezg.com/documents/comentarios-preliminares-al-proyecto-de-reforma-de-la-ley-organica-de-hidrocarburos-de-22-de-enero-de-2026/;

38), in the regulation of the special advantages for the Republic that must be provided in the instruments through which said transfer is effected, a new one providing to include: "a economic compensation to the Republic for access to hydrocarbon reserves."

In addition, reference was conserved, among the advantages, of the possibility of establishment of "the employment and assignment of new and advanced technologies, as well as the granting of scholarships, technical training opportunities or other activities of development of the human factor."

4. Regime of mixed companies

The draft reform also affected the regime of mixed companies as one of the ways to carry out primary activities, which was already regulated in the Organic Law, in two aspects, first, in eliminating parliamentary control for the their incorporation and approval of the respective contract; and second, in the regulation of the conditions for the exercise of the activity of mixed companies.

A. Elimination of parliamentary control

In accordance with article 150 of the Constitution, national public interest contracts must be submitted to the approval of the National Assembly when a statute so determines. And it was then in accordance with this provision, that article 33 of the Organic Law on Hydrocarbons of 2001, provided that the contracts for the incorporation of mixed companies had to be submitted to the approval of the National Assembly.

This regulation is proposed to be changed with the reform (*Article 5. Modifies article 33, which becomes article 34*), eliminating parliamentary control not only to establish the conditions for the creation of mixed companies, but for the approval of the national public interest contracts of incorporation of each of the mixed companies, providing, in substitution, only a regime of "notification" to the parliamentary body. The proposed text only provides that:

> "National Executive, through the Ministry with competence in hydrocarbon matters, must inform [the National Assembly] of all the pertinent circumstances to said constitution and conditions, including the special advantages provided in favor of the Bolivarian Republic of Venezuela."

In the reform it is specified, in addition, with precision the sources of the legal regime that governs mixed companies, which are the own Organic Law of Hydrocarbon and, "in each particular case, by the Decree that authorizes its creation, its constitutive statutory document and suppletorily by the Code of Commerce and other laws that were applicable to it."

B. Conditions for the activity of mixed companies

As for mixed companies, the reform also affected the norm (*Article 6. Modifies article 34, which becomes article 35*) that establishes the requirements and conditions for the exercise of primary activities by mixed companies, leaving without modification: (i) what is related to the maximum duration of twenty-five (25) years, extendable for a period not exceeding fifteen (15) years; (ii) the indications on the area where the activities are to be carried out; and (iii) the conservation of the infrastructure destined to the realization of the activities said activities, to the effects that it be delivered in property to the Republic, free of liens and without any compensation, upon extinction by any cause of the granted rights, in a form similar to the regime of reversion in concessions.

One substantive aspect that varies the text of the Law in relation to the norm proposed in the reform, is ***the elimination*** of the last paragraph of article 34 in which it was established that the solution of controversies in the execution of the contracts, in short, had to be decided by the ***competent Courts of the Republic***, in accordance with its laws.

The reason for this reform lies in that in the Draft, it is proposed to add a new article (*Article 2. A new article is incorporated, which becomes article 8*), expressly regulating the possibility of establishing arbitration as a means of solution of controversies, as indicated below.

C. The status of the minority shareholder in mixed companies

On the other hand, with the proposed reform of the Law, with the object of further liberalizing the regime of mixed companies and decreasing the control of the State over their activities, it is proposed (*Article 7: A new article is incorporated, which becomes article 36*), to incorporate a new regulatory norm of said mixed companies with this text:

> Article 36: The National Executive, through the Ministry with competence in hydrocarbon matters, may authorize the shareholder with minority participation of a mixed company to:
>
> 1. Carry out the direct commercialization of the totality or a quota of the production of the mixed company, provided that it can prove that the sale prices will be above the prices achieved by the companies of exclusive ownership of the Republic, with its corresponding declaration of income to the Central Bank of Venezuela, to the Ministry with competence in hydrocarbons, and to the petroleum tax system.

2. Open and manage bank accounts in any currency and jurisdiction, for the use and administration of funds, increasing the flow of foreign currency towards the national economy.

3. Exercise the technical and operational management of the society directly or through a specialized petroleum service provider related to it, and under the supervision of the governing body in the matter of hydrocarbons, in order to guarantee operational efficiency and the application of the best practices of the international oil industry. The cost of these petroleum services must be reasonable.

The mixed company must be sufficiently efficient so that the cost of production of the barrel is equal to or less than that of the production of the company of exclusive ownership of the State.

In any case in the management and administration of the Mixed Companies the factor of economic-financial equilibrium must be ensured until reaching the return of the investment.

In this way, the rigid regime of mixed companies that was regulated in the Organic Law on Hydrocarbons of 2001, reformed in 2006, disappears from the Law and with it the own scheme of the reserve to the State of the Oil Industry that was then established in substitution of the provisions of the Nationalization Law of 1975.

5. The regime of contracts for the development of primary activities with private companies domiciled in the country, as operating company

Considering that the Draft reform is proposing, as one of its fundamental aspects of the denationalization of the oil industry, that private companies domiciled in the country (in addition to State companies and mixed companies) can also be operating companies and execute primary activities of hydrocarbons, a new section is then proposed (*Article 9*), to be incorporated in the Law; Chapter III. Of the Exercise of Activities, .which include a set of provisions that, when analyzed as a whole, evoke the classic regulatory norms of the ***old concessions*** in administrative law/ Among them, stand out, for example, the assumption by account of the private company of its activity at its account and risk, the use of public goods to carry out the activity, the provision of clauses related to the maintenance of the economic equilibrium of the contract and to the reversion of the goods affected to the activity upon conclusion of the contract.

Said new norms are the following:

Article 40. The companies of exclusive ownership of the Republic or its subsidiaries may subscribe Contracts ***with private companies domiciled in Venezuela for the execution of primary activities***, according to which the

operating company ***will assume the integral management of the exercise of the activities, at its exclusive cost, account and risk,*** having to demonstrate financial and technical capacity through a Business Plan approved by the Ministry with competence in hydrocarbons.

To such effects, the companies of exclusive ownership of the Republic or its subsidiaries ***will not assume financial commitments or debts*** derived from the development of these operations. Likewise, ***the Republic will conserve the ownership over the hydrocarbon deposits*** over which the operating companies will develop the primary activities.

Article 41. The remuneration of the operating companies in the Contracts for the development of primary activities will consist of a ***percentage participation on the volumes of hydrocarbons fiscalized***, which may be ***commercialized directly*** by the operating company, once the governmental obligations are fulfilled, in the terms provided for in this Law.

Article 42. The companies of exclusive ownership of the Republic or its subsidiaries in the subscription of Contracts with private companies domiciled in Venezuela, ***may lease to the operating company the assets and materials of its ownership or legal availability destined to the exercise of the activities primary***; as well as, ***cede the use of the operational area and of the delimited area,*** authorized by the Ministry with competence in hydrocarbon matters, during the validity of the contract. As consideration for the use of said assets, the operating company will pay to the companies of exclusive ownership of the Republic or its subsidiaries, **a canon** that will be fixed in the respective Contract.

The rights conferred over said areas and assets by the companies of exclusive ownership of the Republic or its subsidiaries to the operating company will be extinguished automatically upon conclusion of the contract.

Article 43. Once the validity of the contract is concluded, the operating company must ***restore the leased assets, and transfer the ownership, free of any lien,*** to the company of exclusive ownership of the Republic or its subsidiaries, of all the goods incorporated, built or acquired during the validity of the contract, ***without this generating obligation of payment or compensation*** any by the companies of exclusive ownership of the Republic or its subsidiaries.

Article 44. The operating companies of the Contracts for the development of primary activities will be subject to the ***tax regime provided*** for in this Law. The company of exclusive ownership of the Republic or any of its subsidiaries,

will act as agent of perception and liquidation of royalties and taxes before the National Treasury, as well as the parafiscal contributions.

Article 45. The Contracts that establish the terms and conditions for the realization of primary activities may include a ***clause of reestablishment of the economic-financial equilibrium*** until reaching the return of the investment.

6. The fiscal regime of the oil industry: royalties and the extraction tax

Regarding the royalties, that is, the right of the State to have a participation in the extracted hydrocarbons, what is proposed in the reform (***Article 10. Modifies article 44, which becomes article 52***), is to flexibilize its application regulating the possibility for the reductions of the royalty, a differentiated way for mixed companies and for private operating companies, in the following way:

Article 52. Of the volumes of hydrocarbons extracted from any deposit, the State has the right to a participation of thirty percent (30%) as royalty.

The National Executive, in case it is demonstrated to its satisfaction that a project of exploitation of a deposit is not economically exploitable with the royalty of thirty percent (30%) established in this article, ***may reduce it to achieve the economicity of the exploitation discriminating between the mixed companies and the private operating companies***, in the following terms:

1. ***Up to a limit of twenty percent (20%)*** in the cases of primary activities carried out by private companies within the framework of contracts entered into with companies of exclusive ownership of the Republic or its subsidiaries.

2. ***Up to a limit of fifteen percent (15%)*** in the cases of primary activities carried out by mixed companies.

The National Executive, through the Ministry with competence in hydrocarbon matters, is empowered to restore the royalty, totally or partially, up to reaching again thirty percent (30%), when it is demonstrated that the economicity of the deposit can be maintained with said restitution.

Regarding the extraction tax, calculated in a percentage of the value of the liquid hydrocarbons extracted, the proposed reform (*Article 11. Modifies numeral 4 of article 48, which becomes article 56*), consists basically in regulating the possibility of rebates to the same when the deposits are not profitable, in the following way:

4. *Extraction Tax*. One third (1/3) of the value of all liquid hydrocarbons extracted from any deposit, calculated on the same base established in article 52 of this Law for the calculation of the royalty in money. This tax will be paid monthly together with the royalty provided for in article 52 of this Law, by the operating company that extracts said hydrocarbons. When calculating the

Extraction Tax, the taxpayer has the right to deduct what it would have paid for royalty, including the additional royalty that it is paying as special advantage. The taxpayer also has the right to deduct from the Extraction Tax what it would have paid for any special advantage payable annually, but only in subsequent periods to the payment of said special annual advantage.

The National Executive, when it so deems justified according to market conditions, or of a specific investment project to incentivize, among others, secondary recovery projects or that a project of exploitation of a *deposit* is not economically profitable, may reduce, for the time it determines, the Extraction Tax up to a minimum of twenty percent (20%) for the contracts between companies of exclusive ownership of the Republic and the operating companies; or up to fifteen percent (15%) for mixed companies.

7. The hydrocarbon commercialization regime

In the 2001 Organic Law it was established that the commercialization of hydrocarbons was reserved to State companies (arts. 27 and 57), so that even mixed companies had to sell the natural hydrocarbons they produced to said State companies. Now with the proposed Reform, for the purposes of liberalizing the regime of the oil industry, it is proposed (*Article 12. Modifies article 57, which becomes article 64*), fundamentally, to attribute competence to the National Executive to authorize mixed companies and private companies operators of primary activities, to directly commercialize the natural hydrocarbons they produce, in the following way:

Article 64. The commercialization activities of natural hydrocarbons, as well as those of the derived products that by Decree the National Executive indicates, will be exercised, as a general rule, by the companies referred to in article 28 of this Law.

Exceptionally, the National Executive, through the Ministry with competence in hydrocarbon matters, may authorize the companies referred to in numerals 2 and 3 of article 22 of this Law, to directly commercialize the natural hydrocarbons produced in the assigned area, provided that these can prove that the sale prices will be above the prices achieved by the companies of exclusive ownership of the Republic and the effective control of the State over the strategic decisions of commercialization is ensured. In the absence of express authorization for direct commercialization, the natural hydrocarbons they produce must be sold to the companies referred to in article 28 of this Law.

The authorized direct commercialization ***will not imply, in any case, the transfer of the ownership of the deposits nor the authorization for the constitution of real guarantees*** over deposits or over sovereignty rights.

The Ministry with competence in hydrocarbon matters may suspend or revoke the authorization of direct commercialization when the non-fulfillment of the commercialization plan is verified, by a significant difference of the sale prices realized with respect to market prices, the affectation of the priority internal supply or the serious infraction of fiscal or environmental obligations.

8. The regulation of arbitration for the solution of controversies

In addition to the reform of article 34 referred to the conditions for the activities of mixed companies, excluding the provision that excluded arbitration for the solution of controversies, previously referred to, in the Draft reform of the Law it is proposed to add a new article (*Article 2. A new article is incorporated, which becomes article 8*), in which the possibility of establishing arbitration as a means of solution of controversies is expressly regulated, with respect to all the contracts that the Law provides in petroleum matters, with the following text:

"Article 8. The doubts and controversies of any nature that may arise on the occasion of the realization of activities object of this Law and that cannot be resolved amicably by the parties, may be decided by the competent Courts of the Republic, or through alternative mechanisms of resolution of controversies, including mediation and independent arbitrations."

It is observed from this proposed provision, however, that even though it does not exclude the possibility of international arbitration, the use of the qualifier of the permitted arbitrations, as that they must be "*independent*," could raise an unnecessary discussion on the scope of application of the norm, given that in the Venezuelan legislation "independent arbitration" is defined in the Commercial Arbitration Law of 1998,[30] as that "regulated by the parties without intervention of the arbitration centers," (art. 2). Although it must be understood that the provision refers to the arbitration centers regulated in the own Law, it must not be lost sight of that international arbitration, normally is carried out in International Arbitration Centers.

The provision of arbitration as a means of solution of controversies, in any case, without doubt is an important legal guarantee to attract the new investments that the process of privatization of the oil industry that is sought to initiate with the Draft Law on Hydrocarbons previously analyzed requires, but taking into account, always, that said guarantees are not achieved with only approving a Law. As José Ignacio Hernández G. observed:

"the reestablishment of legal security requires much more than a legal reform. Without reestablishing essential elements of the Rule of Law and of the

30 See *Gaceta Oficial* No. 36430, 7 April 1998.

legal guarantee of economic rights, such as economic freedom, freedom of contracts and property, not even the best regulatory reform would allow generating adequate conditions of legal security."[31]

New York, January 26, 2026

31 See José Ignacio Hernández G., *Comentarios Preliminares al Proyecto de Reforma de la Ley Orgánica De Hidrocarburos del 22 de enero de 2026,"* 22 enero 2026, p. 8, available at: https://www.joseignaciohernandezg.com/documents/comentarios-preliminares-al-proyecto-de-reforma-de-la-ley-organica-de-hidrocarburos-de-22-de-enero-de-2026/.