

Venezuela

MARKET REVIEW

The year 2003 was a bad year for Venezuela. Its GDP decreased 9.2%, and its unemployment rate, as of December 2003, was almost 17%.

According to Europa Press (Mr Daniel Ferraro) and according to "Informe a la Asamblea Nacional sobre los Resultados Economicos del año 2003", prepared by Banco Central de Venezuela (Venezuelan Central Bank), the following is an abstract of the situation in Venezuela during the year 2003:

Venezuelan GDP dropped 9.2% during 2003 as a consequence of the exchange control imposed by the Chavez government in February 2003; stated by the Banco Central de Venezuela (BCV) in its Annual Report prepared for the Asamblea Nacional.

This constitutes a significant drop of GDP compared with what happened during the previous year, when GDP dropped 8.9%. Along with such negative changes in GDP, the unemployment rate rose, reaching 17.9%. The inflation rate for 2003 was equivalent to 27.1%, according to the information provided by the Venezuelan Government (Annual Report 2003).

Managers of BCV pointed out that economic contraction occurred due to the strike in the petroleum industry during December 2002 and January 2003. This situation pushed the Government to implement price and exchange controls in order to reduce the depreciation of local currency and to lower the inflation pressure.

Oil activities were reduced about 10.7% (levels of production were reduced because of the above-mentioned strike).

GDP, related to the non-oil industry, dropped 8%. The most affected sectors were: construction (-37.4%), commerce (-12%) and manufacturing (-10.6%).

The Central Bank of Venezuela highlighted that during 2003, the situation of public finances continued to be a mirror of the incapability of the economy to

generate enough resources based only in the oil activities.

During the first half of 2003, the policies adopted by the Currency Management Agency (Cadivi – Comisión de Administración de Divisas) produced barriers to re-establish a normal situation.

Since July 2003, the steps before this agency were smoother, but that change did not help because transactions became more expensive, which in turn affected the principal macroeconomic variables.

Venezuela exported US\$25.7bn in 2003, out of which US\$4.9bn was non-oil-related exportations.

Total foreign investment in Venezuela during 2003 represented US\$1.1bn, largely concentrated in the oil and utilities industry.

The leasing industry. Leasing started in Venezuela in 1967. For decades, the industry grew and was one of the most remarkable leasing industries in Latin America.

Similar to the process of Mexico and Ecuador, universal banking initiated the virtual disappearance of independent leasing companies. Different to Mexico, foreign investment has not yet started its role of reshaping the industry. We anticipate that the process will return as soon as the current political and economic turmoil is over in Venezuela.

The total of the leasing industry in Venezuela is difficult to determine, since most of the service is offered by universal banks who do not disclose in detail in their balance sheet what portion of their portfolio is leasing.

In 2002, leasing companies registered an amount equivalent to US\$5m compared with US\$35m in 2001.

Market share. According to the statistical summary for the banking system (Resumen Estadístico del Sistema Bancario), prepared by the Superintendencia de Bancos y otras Instituciones Financieras de Venezuela (SUDEBAN) as of December 31, 2003, there is only one independent leasing company performing lease operations within the Venezuelan leasing market: ANFICO with a total of lease receivables

Leasing services

DaimlerChrysler Services Venezuela L.L.C.

Avda Francisco de Miranda, Edificio Parque Cristal, Torre Este, Piso 14, Ofic. 14-12 Urbanización Los Palos Grandes, Chacao, 1060 Caracas, Venezuela. Tel: (212) 400 3200; Fax: (212) 285 9070; E-Mail: Contact.us@daimlerchrysler.com; Web-Site: <http://www.daimlerchryslerservices.com>. Managing Director: Eduvigis Alvarado.

Activities: Finance and leasing solutions for all automotive product brands of the DaimlerChrysler Group.

Shareholders: A company of the DaimlerChrysler Services Group.

of Bs12.6bn (US\$7.88m).

The rest of the industry operates within the universal banking system, though the figures are not discriminated. It can be assumed, however, that Banco Provienda, which recently merged with Arrendaven C.A., has a substantial leasing portfolio.

Law and regulation. The organisation of independent leasing companies is strictly regulated and subject to control of the Government:

1. The Law provides that only the legal entities organised as "arrendadoras financieras" are legally entitled to act as lessors, since the financial leasing transaction is defined within the scope of a financial activity.
2. Therefore, in order to act as financial lessor, it is necessary to obtain a licence that shall be granted by the Superintendencia de Bancos (Sudeban). For that purpose, there must be a promotion led by no less than 10 persons that shall be evaluated by the Sudeban. In addition, the lessor must be incorporated as a Compañía Anónima, and must have a paid capital of Bs5bn, that is approximately US\$3m, if the domicile is in Caracas, or Bs2.5bn if elsewhere in Venezuela.¹
3. Failure to obtain the licence means that the person or legal entity is not allowed to enter into financial leasing agreements as a lessor, unless the lessor acts solely with its own funds, but in such case a reporting obligation may be set forth by Sudeban.²
4. A person or legal entity that enters into financial leasing agreements as a lessor, with funds at risk without having a licence, may be taken over by Sudeban and/or FOGADE, and dissolved, and its directors will be subject to fines that are convertible in prison.³ Currently, there are only two companies that have licences granted by Sudeban out of 17 companies that were authorised to operate three years ago.
5. Financial lessors having a licence from Sudeban (and in its case, physical persons or legal entities doing business with their own funds) are subject to reporting obligations, to reserve requirement, to keep a leverage ratio whereby equity must not be less than 8% of total assets weighted according to their risk level plus total of contingencies, and 6% of total assets weighted according to their risk level.⁴

6. The inspection of the Sudeban is tight and highly demanding.⁵

Financial lessors are allowed to raise funds from the public. There are, however, some restrictions. These funds can only come from debentures and/or savings certificates.⁶ Financial lessors are not allowed to raise deposits "call", savings or term deposits.⁷

Therefore, investments in leasing companies are not subject to the programme of deposit insurance from FOGADE.⁸

Foreign investment in Venezuelan leasing companies is welcome.

Accounting. Lessors are subject to accounting rules set forth by the Superintendencia de Bancos. The latest regulation is contained in Resolución No. SBS-2002-0297 29 de abril del 2002, which basically adopted the same principles of IAS No. 17, with further adjustments, being the latest Resolution 135.03 May 2003.

Taxation. Leasing contracts are subject to value-added tax (VAT) of 16% over the amount of the corresponding lease payments less the financial component of each payment.

Income taxes are applied at an increasing tariff with a top, but generally applicable, rate of 34%. For lessees, effective from January 1, 2002, lease rentals are wholly deductible from taxable income.⁹

Finally, according to Decree 1.808, April 23, 1997, all proceeds coming from loans and any other type of financial credit provided by foreign financial institutions, without domicile in Venezuela, will be taxed. The rate is 4.95% and shall be withheld by the borrower.

The lease contract. The lease contract is subjected to the general rules for contracts and obligations as provided by the Banking and Financial Entities Law, the Commercial Code and the Civil Code. The legal definition for the leasing contract contained in the new Compilation of Banking Law differs from the definition contained by the Ottawa Convention.

Therefore, lessors are not legally protected against defences to the hell-or-high-water provision and the tripartite nature of the leasing transaction is not recognised.

Notes:

- 1 Article 117, Ley General de Bancos.
- 2 Article 4, Decree 1526, 2001, reforming Ley General de Bancos (hereafter "Ley General de Bancos").
- 3 Article 4 Ley General de Bancos.

4 Article 24, Ley General de Bancos, and Resolución 90/95 Sudeban.

5 The superintendency examines banks and other financial institutions, including financial lessors, once per year. On-site examinations take place if an institution shows signs of weakness or deterioration and is undercapitalised according to the indices of CAMEL, as determined by the results of off-site inspections.

CAMEL is utilised in the examination of banks. This system classifies banks from one to five, with one indicating a solid institution and five an institution of high risk.

6 Article 79, Ley General de Bancos.

7 Article 85, Ley General de Bancos.

8 Deposits are insured by the Guarantee Deposit and Banking Protection Fund (Fondo de Garantía de Depósitos y Protección Bancaria, FOGADE). Regulations establish that deposits are guaranteed in local currency for an amount up to 4 million Bolívares per depositor.

9 Article 29, num.12, Ley del Impuesto sobre la Renta (Gaceta Oficial N° 5.566 Extraordinario, de fecha 28 de diciembre de 2001).

Sources:

- Instituto Nacional de Estadística - INE. www.ine.gov.ve
- Cámara Venezolana Americana de Comercio e Industria. www.venamcham.org
- Servicio Nacional Integrado de Administración Aduanera y Tributaria - SENIAT. www.seniat.gov.ve
- Superintendencia de Bancos y otras Instituciones Financieras - SUDEBAN. www.sudeban.gov.ve
- Banco Central de Venezuela - BCV. www.bcv.org.ve
- Confederación Venezolana de Industriales. www.coindustria.org

This article was prepared by Dr Rafael Ramirez-Rodriguez, Associate and Dr Rafael Castillo Triana, President and CEO of FTAA CONSULTING, INC., the US liaison office and Principal to The Alta Group Latin American Region, 1920 Lakeshore Drive, Fort Lauderdale, Florida 33326, US. Tel: +1 954 816 4446, Fax: +1 954 389 3610. Email: rc@ftaaconsulting.com, Website: www.ftaaconsulting.com and www.thealtagrouplar.com