

Venezuela: ICSID cases, a potential risk on the horizon

Emerging Markets • Economics • Latin America • Venezuela

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We estimate that Venezuela's total potential liabilities at the International Centre for Settlement of Investment Disputes (ICSID) could reach around \$17bn.

Venezuela has 21 cases currently pending¹ at the ICSID, and one case that appears as concluded in the docket with an award that has not yet been enforced. Refusal to pay an ICSID award could cross-default to other Venezuelan debt, such as sovereign bonds. However, these arbitrations usually take a long time to be resolved, and their awards are not easily enforceable.

ICSID's claims against Venezuela are the aftermath of several expropriations that occurred during the Hugo Chavez administration. The arbitrations' spectrum is quite broad: some are related to mining concessions, others to chemical producing companies, and even one to a coffee producing plant. The total potential dollar amount of these claims is hard to quantify. However, following news reports and available court filings, we estimate that total liabilities could reach around \$17bn. The claims in question outline the potential liabilities that the government could face in future years, rather than imminent payments. There are several claims for which we could not find relevant information regarding the amount of the award requested.

ICSID cases have historically taken a long time to be resolved. Once a dispute arises, a request for arbitration must be made at ICSID. The case is analyzed in order to determine if it can actually be considered for ICSID arbitration. A tribunal of three arbitrators is then formed to oversee the case. According to our estimates, the ICSID tribunals in Venezuelan cases have taken on average six months to be constituted (excluding outliers). Finally, hearings and subsequent deliberations start until an award is granted. Cases that have recently hit the headlines such as "Gold Reserve Inc. Vs. Venezuela" and "ExxonMobil Vs. Venezuela" took over four and six years respectively from the time the tribunal was formed to the time the award was granted.

Award issuance by ICSID does not imply that the respondent must pay damages right away. In fact, the claims' recovery has been as lengthy and complicated as the arbitrations themselves (Exhibit 1). After an award is sanctioned, the case must be taken to a court of an ICSID member country and enforced by that court, which then opens the door for a number of appeals as well. Furthermore, the case can still be subject to "annulment requests" and "award revision requests" at ICSID which may also prevent the case from moving forward.

¹ There are three other pending cases in the docket. However, it is our understanding that Venezuela has reached settlements with the plaintiffs. The cases will remain as "pending" until they are formally concluded.

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In Venezuela's case, once a judgment is declared as final, refusal to pay an ICSID award could potentially cross-default to the country's foreign law bonds. The event of default language in Venezuela's dollar-denominated bond prospectuses indicates that default would occur when: "(h) there shall have been entered against the Republic or Banco Central a final judgment, decree or order by a court of competent jurisdiction from which no appeal may be or is taken, for the payment of money in excess of U.S. \$100,000,000 and 30 days shall have passed since the entry of any such order without it having been satisfied or stayed". The possibility of award enforcement of ICSID cases is a cause for concern given Venezuela's lack of liquidity. Near-term liabilities considering cases in which the award has already been issued² reach over \$2.4bn. However, the Republic could delay enforcement and negotiate the terms of repayment with future creditors, in our view.

We highlight that Venezuela retired from ICSID on January of 2012. At the time, the government said that this decision was meant to avoid future litigations and that it did not consider ICSID as entitled to decide over sovereign decisions of the country.

In the table below we show pending and selected concluded cases of Venezuela at ICSID's docket. Our estimate of potential liabilities of around \$17bn is the sum of the minimum expected or rendered awards and does not include any interest payments. Our estimate takes into account available information and assumes a \$7bn payment in the ConocoPhillips case and no award for cases in which there is no data.

² This includes the cases of Gold Reserve Inc., Tidewater, ExxonMobil, OI European Group and Flughafen Zürich.

Exhibit 1: Total pending and selected concluded cases of Venezuela at ICSID's docket

Date of initiation	Claimant(s)	Case reason	Award issuance	Award expected/ rendered
May-14	Highbury International AVV, Compañía Minera de Bajo Caroní AVV, and Ramstein Trading Inc.	Mining concession		\$209.7mn + interest
Apr-14	Anglo American PLC	Mining concession		Over \$600mn + interest
Jun-13	Valores Mundiales, S.L. and Consorcio Andino S.L.	Food products enterprise		N/A
Aug-12	Transban Investments Corp.	Vehicle import enterprise		Around \$100mn + interest
Aug-12	Tenaris S.A. and Talta - Trading e Marketing Sociedade Unipessoal Lda.	Production of hot briquetted iron and steel products		N/A
Aug-12	Fábrica de Vidrios Los Andes, C.A. and Owens-Illinois de Venezuela, C.A.	Glass production enterprise		N/A
Aug-12	Blue Bank International & Trust (Barbados) Ltd.	Tourism and hospitality facilities		Around \$300mn + interest
Aug-12	Rusoro Mining Ltd.	Gold exploration and exploitation operations		\$3bn + interest
Jul-12	Valle Verde Sociedad Financiera S.L.	Banking enterprise		Around \$200mn + interest
Jun-12	Saint-Gobain Performance Plastics Europe	Proppant production		N/A
Sep-11	Tenaris S.A. and Talta - Trading e Marketing Sociedade Unipessoal Lda.	Hot briquetted iron production plant		N/A
Sep-11	OI European Group B.V.	Glass production enterprise	Mar-15	\$372.5mn + (Liber + 4%, since Oct-2010)
Jul-11	Koch Minerals Sàrl and Koch Nitrogen International Sàrl	Construction and operation of fertilizer plant		N/A
Mar-11	Crystallex International Corporation	Mining company		\$3.4bn + interest
Feb-11	Longreef Investments A.V.V.	Coffee production facilities		N/A
Jan-11	Highbury International AVV and Ramstein Trading Inc.	Mining concession	Sep-13	Zero
Aug-10	Flughafen Zürich A.G. and Gestión e Ingeniería IDC S.A.	Development, operation, and maintenance of an airport	Nov-14	\$19.4mn + (Liber + 4%, since Dec-2005)
Mar-10	Tidewater Investment SRL and Tidewater Caribe, C.A.	Maritime-support services	Mar-15	46.4 mn + (4.5% annual since May-2009)
Dec-07	ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V.	Oil and gas enterprise		\$7bn to \$30bn
Oct-07	Venezuela Holdings B.V. and others (ExxonMobil)*	Oil and gas enterprise	Oct-14	\$1.6bn + interest
Mar-06	Vestey Group Ltd	Farming enterprise		N/A
Concluded cases				
Nov-09	Gold Reserve Inc.	Mining company	Sep-14	\$713mn + (Liber + 2%, since Apr-2008)
Total claims including pending and concluded cases				Around \$17bn**

* Venezuela already paid a portion of the award (\$746mn + interest) in a 2011 International Chamber of Commerce (ICC) decision; as double recovery is not permitted the actual liability is around \$1.2bn including interests, according to our estimates.

**The value only takes into account the information available; assumes \$7bn in the ConocoPhillips case and zero for cases in which there is no data.

Source: ICSID, Credit Suisse

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