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Resolution*

Venezuela's Exit from ICSID

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On 24 January 2012, President Hugo Chávez followed through on his repeated threats to withdraw Venezuela's membership from the International Centre for the Settlement of Investment Disputes ("ICSID"), the most widely used facility for the settlement of global investment disputes. (See our [previous report](#) on these threats in September 2011.) The timing coincides with the merits hearing in the ICSID arbitration by Exxon Mobil against Venezuela scheduled to occur this month in Paris.

In its notice, Venezuela noted a concern for its sovereignty and for alleged partiality by ICSID tribunals in favor of investors. Venezuela also has separately indicated that it intends to "re-negotiate" existing BITs.

The ICSID Convention provides a number of protections for current and some future claims despite Venezuela's withdrawal. For instance, in accordance with Article 71 of the ICSID Convention, the denunciation of Venezuela's ICSID membership will take effect only **six months after** the receipt of Venezuela's notice by ICSID, i.e., on 25 July 2012. Moreover, in accordance with Article 72 of the ICSID Convention, notice of withdrawal will not "affect [Venezuela's or its subdivisions' or agencies'] rights or obligations under [the ICSID] Convention... arising out of consent to the jurisdiction of the Centre given by one of them before such notice was received" by ICSID.

A withdrawal from ICSID therefore will take some time to come into effect, and will not adversely impact claims already filed at ICSID. However, other investors in Venezuela need to consider how to best protect their future rights. The correct view for investors is that unilateral consent in a bilateral investment treaty already triggers the rights to arbitrate reflected in Article 72 of the Convention. *See, e.g.,* Emmanuel Gaillard, "The Denunciation of the ICSID Convention," TDM Vol. 4(5) (2007) (noting that "the investor is protected by Article 25(1) of the convention, which defines jurisdiction and provides that '[w]hen the parties have given their consent, no party may withdraw its consent unilaterally'").

However, this has not yet been tested in practice. For example, although both Bolivia and Ecuador denounced their ICSID membership in 2007 and 2009, respectively, the issue of whether claims filed with ICSID after the notices of withdrawal were submitted has not yet been determined. This is, in part, because arbitrations that might consider the issue have—to date—been resolved by agreement of the parties (*see, e.g., Corporación Quiport S.A. v. Republic of Ecuador*, ICSID Case No. ARB/09/23) or have not yet progressed to the relevant deciding point in the proceedings (*see, e.g., Pan American Energy LLC v. Plurinational State of Bolivia*, ICSID Case No. ARB/10/8).

Ideally, investors should take steps to protect their interests before the withdrawal takes effect on 25 July. For example, investors should consider with their lawyers issuing a letter to the Venezuelan government stating explicitly that they accept Venezuela's offer under the applicable bilateral investment treaty (or other relevant source) to submit disputes to ICSID jurisdiction. This may improve the investor's situation should a claim arise before the current bilateral investment treaties expire. In addition, investors should evaluate whether the BIT contains an alternative to ICSID, such as *ad hoc* arbitration under UNCITRAL rules.

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