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Venezuela's Threatened Exit from ICSID

Venezuelan President Hugo Chávez this month announced Venezuela's intended withdrawal from the World Bank and the IMF, and he is reported to be reviewing plans for Venezuela's withdrawal from the World Bank's International Centre for the Settlement of Investment Disputes¹, meaning that Venezuela may cease to be a signatory to the ICSID Convention.

The ICSID Convention creates a dispute resolution mechanism within the World Bank that has become an important forum for aggrieved investors in recent years². The threatened withdrawal from ICSID comes at a time when Venezuela has begun to nationalize heavily foreign-invested enterprises in hydrocarbons, including in the Orinoco Belt, where oil reserves are believed to be among the largest in the world³, along with other sectors of the Venezuelan economy. These nationalizations are being met with stiffened resolve by some investors⁴.

Just how easy would it be for Venezuela to walk away from its international legal commitments? There is of course no telling at this point the precise actions Venezuela may take. In addition, no state has ever withdrawn from ICSID⁵, so legal issues of first impression likely would be presented. At one end of the spectrum of opinion, Christoph H. Schreuer, an influential law professor and author of a frequently cited academic commentary on the ICSID Convention, has been quoted that Venezuela's withdrawal from the ICSID Convention should be viewed as having immediate effect and as cutting off legal rights, at least as to investors who had not previously accepted Venezuela's offer to arbitrate, whether by commencing proceedings or otherwise⁶.

On the other hand is the view that a 6-month notice period specified within the ICSID Convention would allow the assertion of new claims even

following a Venezuelan withdrawal⁷. In addition, the ICSID Convention is hardly Venezuela's only international legal commitment of potential relevance to foreign investors. Sources of rights potentially assertable by foreign investors include investment treaties that Venezuela has entered with more than 20 countries, and Venezuela's Foreign Investment Law of 1999, which makes express reference to ICSID and contains assurances of fair and equitable treatment.

Milbank Tweed has significant expertise in investor-state dispute resolution in general and arbitration pursuant to the ICSID Rules in particular. We also have extensive Venezuelan experience and are industry leaders in energy transactions and restructurings. Our experience may allow us to be of assistance as events in Venezuela continue to unfold.

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You may also contact any member of Milbank's Litigation Group. Contact information can be found on Milbank's website at: http://www.milbank.com/en/PracticeAreas/LitigationArbitration_alpha.htm.

¹ See *Venezuela and Bolivia threaten to leave ICSID*, Latin Lawyer Online, May 3, 2007.

² ICSID has a total case volume of 235 pending and concluded cases. ICSID registered 209 of the cases after 1992. See <http://www.worldbank.org/icsid/cases/>.

³ See Chávez hails state control of Orinoco oilfields, IT News Report, May 2, 2007, available at <http://www.msnbc.msn.com/id/18424088/> (the Orinoco Belt "could contain the biggest oil reserves in the world").

⁴ See Venezuela slaps big levy on Conoco, LA Times News Report, May 12, 2007, available at <http://www.latimes.com/business/taxes/la-fi-briefs12.2may12,15931716.story?coll=la-headlines-business-taxes>.

⁵ It is reported that Bolivia, whose President Evo Morales has joined with Chávez on April 29th in denunciation of the World Bank, on or about May 1, 2007 sent a letter to ICSID stating Bolivia's withdrawal from the ICSID Convention. See *Bolivia notifies World Bank of withdrawal from ICSID, pursues BIT revisions*, Investment Treaty News, May 9, 2007.

⁶ See *Bolivia notifies World Bank of withdrawal from ICSID, pursues BIT revisions*, Investment Treaty News, May 9, 2007.

⁷ *Id.*