IN THE MATTER OF ARBITRATION
UNDER THE UNCITRAL ARBITRATION RULES

VENEZUELA US, S.R.L.

Claimant

adv.

BOLIVARIAN REPUBLIC OF VENEZUELA

Respondent

NOTICE OF ARBITRATION

March 22, 2013

King & Spalding LLP
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Counsel for Claimant

CLAIMANT'S NOTICE OF ARBITRATION

Pursuant to Article 8 of the Agreement Between the Government of Barbados and the Government of the Republic of Venezuela for the Promotion and Protection of Investments (the "Barbados/Venezuela BIT" or the "BIT") and the UNCITRAL Arbitration Rules, Claimant Venezuela US, S.R.L. ("VUS") hereby gives notice of and commences arbitration of an existing legal dispute between it and the Bolivarian Republic of Venezuela ("Venezuela") concerning an investment by Claimant in Venezuela subject to the provisions and protections of the BIT.[1] Venezuela has failed, through its acts and omissions, and through the acts and omissions of its State instrumentalities and organs for which it bears responsibility, to afford Claimant's investment in Venezuela the protections guaranteed under the BIT.

I. SUMMARY OF THE DISPUTE

1. A dispute currently exists between VUS, a company organized and existing under the laws of Barbados, and Venezuela with respect to an investment by VUS in Venezuela regarding the mixed company Petroritupano, S.A. ("Petroritupano"), as described below. Venezuela, through its acts and omissions and those of its State-owned entities acting under its direction and control, has breached its obligations to VUS under Articles 2, 3, and 5 of the BIT.

2. VUS's predecessor-in-interest, Norcen International Ltd. ("Norcen"), first invested in hydrocarbons exploration and production in Venezuela in the early 1990s. In 2000, VUS's parent Anadarko Petroleum Corporation ("Anadarko") acquired Norcen's successor and later reorganized its Venezuela investment through VUS.

3. VUS's predecessor invested in Venezuela during the *apertura petrolera* (petroleum opening), in which Venezuela actively sought investments by international oil

[1] Exhibit C-1, Agreement Between the Government of Barbados and the Government of the Republic of Venezuela for the Promotion and Protection of Investments.

companies. Venezuela entered into investment treaties offering protection to foreign investors and into special contracts with terms designed to attract that foreign investment, and Norcen relied upon these assurances with respect to the legal security of its investment in Venezuela.

4. Norcen entered into a November 1993 Operating Services Agreement (the "Oritupano Leona OSA") between a consortium of Contractor companies and the State-owned company, Corpoven, S.A.[2] The Oritupano Leona OSA provided for the Contractors to reactivate and develop marginal oil fields in the Oritupano Leona area of Venezuela.[3] Under the Operating Services Agreement form of relationship, the Contractors provided services for Corpoven at their cost and risk, but had no ownership interest in the hydrocarbons found or produced from the contract area. The Contractors received Operating Fees and Capital Fees per barrel of oil produced, allowing them (if successful) to recover their substantial capital investments and operating costs, plus receiving an Incentive for increasing incremental production from the contract area.

5. In the early 2000s, with Hugo Chávez as its President, the Government of Venezuela ("GOV" or "the Government") became decidedly hostile to foreign involvement in its oil and gas industry. The GOV adopted a new Organic Hydrocarbons Law in 2001 (the "Hydrocarbons Law") which required State control over all upstream hydrocarbons activities and placed significant restrictions on foreign investors.[4] In 2004, the GOV changed its interpretation of the Operating Services Agreements and, rather than continuing to recognize their express

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[2] Ex. C-4, Reactivación de Campos Petroleros, "Convenio de Servicios de Operatción" entre Corpoven S.A. y el Consorcio Compañia Naviera Perez Companc, Norcen International Ltd., Canadian Occidental Petroleum Ltd., and Servicios Corod de Venezuela, S.A. (Nov. 1, 1993).

[3] For convenience, references to "Norcen" include its successors-in-interest with respect to the Oritupano Leona investment unless otherwise clear from the context.

[4] Ex. C-5, Ley Orgánica de Hidrocarburos, Decree No. 1510 (Nov. 2, 2001), Gaceta Oficial No. 37,323 (Nov. 13, 2001).

nature as service contracts to which a 34% income tax rate applied, declared that the OSAs were instead disguised concession agreements to which the much higher tax rate for income from sales of liquid hydrocarbons (then 50%) applied. The GOV retroactively applied this reinterpretation and declared that the Contractors owed the difference in additional taxes for the previous four years.

6. In April 2005, the GOV unilaterally declared all Operating Services Agreements concluded by PDVSA between 1992 and 1997 illegal and required "migration" of those investments to the "mixed company" (*empresa mixta*) structure provided for by the 2001 Hydrocarbons Law. Under that imposed structure, the State must own the majority interest and exercise control over the mixed company, and the mixed company must sell all of the hydrocarbons produced to the State-owned and controlled oil company, Petróleos de Venezuela S.A. ("PDVSA"), or one of PDVSA's 100% State-owned subsidiaries. The international oil companies are only allowed to be minority investors in the mixed company.

7. Venezuela presented VUS with a March 31, 2006, Memorandum of Understanding requiring VUS to transform its investment into an interest in a new mixed company, Petroritupano, S.A. ("Petroritupano"). Petroritupano would be formed and operated pursuant to the terms of the Hydrocarbons Law, various GOV decrees and instruments, a new contract with PSVSA's affiliate Corporación Venezolana del Petróleo, S.A. ("CVP"), and related instruments.

8. VUS reluctantly acceded to the migration to the mixed company form, and the Ortiupano Leona Contractors entered into a Contract for the Conversion to a Mixed Company dated August 7, 2006 (*Contrato para la Conversión a Empresa Mixta*) (the "Conversion

Contract")[5]. In doing so and maintaining its investment in Venezuela, VUS relied upon Venezuela's representations and promises that it would treat the investment fairly and equitably, without discrimination in respect of other national and international investors, that it would not engage in discriminatory and uncompensated expropriation measures, and that it would abide by and cause its State-owned and controlled entities to abide by the terms of their agreements.

9. As a result of this GOV-imposed "migration," Venezuela owns the majority 60% interest in Petroritupano through CVP and a new entity, PDVSA Social, S.A., both of which are owned and controlled by PDVSA and ultimately the State. VUS and a subsidiary of Petróleo Brasileiro S.A ("Petrobras"), Brazil's national oil company, own the remaining minority interest in Petroritupano.[6] As required by the Hydrocarbons Law, the State, through PDVSA and its subsidiaries, retains management and operational control over the mixed company.[7] Venezuela requires Petroritupano to sell all of the hydrocarbons it produces to PDVSA Petróleo, S.A., another PDVSA subsidiary, pursuant to a Hydrocarbons Purchase and Sale Contract dated June 2006.[8]

10. VUS's sole source of return on its substantial investment in Venezuela is now through its entitlement to dividends declared and distributed by Petroritupano, which are largely dependent on the proceeds from Petroritupano's sale of produced hydrocarbons. However,

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[5] Ex. C-2, Contrato para la Conversión a Empresa Mixta entre Corporación Venezolana del Petróleo, S.A., Petrobras Energía Venezuela, S.A., Petrobras Energía, S.A., APC Venezuela, S.R.L., Venezuela US SRL, y Corod Producción, S.A. (3 August 2006) ("Conversion Contract").

[6] Ex. C-3, Petroritupano Articles of Incorporation, Registro Mercantil, published in the Gaceta Oficial No. 38,518 (8 September 2006).

[7] "In accordance with the Hydrocarbons Law, the State, directly or through companies or entities it does exclusively own, must at all times be the owner of more than a fifty percent (50%) interest of the capital stock of the Mixed Company." Ex. C-2, Conversion Contract art. 1.3 (free translation).

[8] *See* Ex. C-2(K), Conversion Contract Annex K, Proyecto de Contrato de Compraventa de Hidrocarburos entre Petroritupano, S.A. y PDVSA Petroléo, S.A. (June 2006). *See also* Ex. C-5, Hydrocarbons Law arts. 27, 57; Ex. C-2, Conversion Contract art. 3 (reciting that the Mixed Company shall sell all liquid hydrocarbons and associated gas produced from the contract area to PDVSA Petróleo or any company PDVSA may designate, pursuant to Article 27 of the Hydrocarbons Law).

Venezuela, through its ownership and control of PDVSA and its subsidiaries, controls both the sale and purchase of the hydrocarbons. Since Venezuela controls Petroritupano's operations, management, and accounting, and also controls whether its State entities pay for the oil received, Venezuela controls the generation and the distribution of the Petroritupano dividends to its shareholders. Venezuela has abused that power to effectively expropriate VUS's investment and otherwise breach its obligations to VUS under the Barbados/Venezuela BIT.

11. Venezuela wrongfully caused Petroritupano to fail and refuse to distribute to VUS the declared Petroritupano dividends owed to VUS for fiscal years 2008 and 2009. In a blatantly discriminatory act, Venezuela caused Petroritupano to pay Brazil's Petrobras the amounts due as its share of Petroritupano dividends for 2008 and 2009, while failing and refusing to pay VUS its commensurate share of those dividends.

12. Venezuela also wrongfully manipulated the relationships between its State-enterprises and caused them to ignore their contract obligations, all to benefit the State over the foreign investors. Among other things, PDVSA Petróleo failed (and continues to fail) to pay Petroritupano for oil purchased and received, and Petroritupano, managed by CVP and PDVSA, did not (and does not) insist on payment or exercise contractual remedies for late payment. Compounding the problem, instead of paying the receivable amounts due, PDVSA instead made, and Petroritupano accepted (without the minority shareholders' approval), a substantial loan, burdened by fees and interest, to fund ongoing operations. On the basis of the imposition of unjustified fees and interest, and other apparent misconduct and irregularities, PDVSA, CVP, and Petroritupano have fraudulently asserted to VUS that Petroritupano suffered losses and owed no dividends for 2010 and 2011. (2012 dividends have not yet been determined.)

13. Venezuela thus destroyed the practical and economic use of VUS's investment, expropriating VUS's investment to the State without compensation to VUS, and otherwise violating its obligations to VUS under the BIT. Venezuela, through its State organs, currently owes VUS at least US$ 58 million in declared but unpaid dividends for 2008 and 2009, plus interest thereon, while Venezuela's other wrongful actions have caused VUS to suffer additional undetermined losses to be determined, but currently estimated to be in excess of US$ 200 million.

14. Venezuela uses its State organs PDVSA, CVP, PDVSA Petróleo, and Petroritupano to engage in this wrongful conduct, and their conduct is fully attributable to Venezuela. PDVSA and its affiliates act on behalf of the State, and their actions are subordinated to the GOV. They are authorized to exercise and do exercise governmental authority. Further, Venezuela exercises direct, clear, and undeniable control over PDVSA's and its affiliates' actions and omissions. Among other things, Rafael Ramirez, Venezuela's Minister of Energy and Petroleum, also simultaneously serves as President of PDVSA, and Petroritupano was created at the direction of the Ministry of Energy.[9]

15. Venezuela, through its intentional acts and omissions, and those of its State-owned entities acting under its direction and control, denied VUS the value of its investment and expropriated that investment to the State, without compensation to VUS. Venezuela also failed to guarantee fair and equitable treatment to VUS's investment, failed to guaranty full protection and security to VUS's investment, treated VUS's investment less favorably than it treats investments of its own investors and those of investors of other states, impaired the value of VUS's investment by arbitrary and discriminatory measures, and failed to comply with the

[9] *See* Ex. C-2, Conversion Contract, at 2-3 (second and fifth whereas clauses); Ex. C-2(A), Conversion Contract Annex A; and Ex. C-2(B), Conversion Contract Annex B.

obligations it entered into with respect to that investment, all in violation of its obligations under the BIT.

II. THE PARTIES

A. Claimant

16. Claimant Venezuela US, S.R.L., a company organized and existing under the laws of Barbados, has as its address:

Venezuela US, S.R.L.
Attention: Luis H. Derrota
1201 Lake Robbins Drive
The Woodlands, Texas 77380
USA

17. Anadarko Petroleum Corporation ("Anadarko"), an independent energy company with hydrocarbons exploration and production operations in the United States, Latin America, Africa, and elsewhere in the world, indirectly owns 100% of VUS. Anadarko owns 100% of Anadarko Venezuela, LLC, a Delaware corporation, which wholly owns VUS's direct parent, Anadarko Venezuela Company, a Cayman Islands corporation. VUS wholly owns and manages APC Venezuela, S.R.L., a local special purpose entity created to operate the investment in Venezuela described herein.

18. VUS should be contacted through the undersigned counsel, who are fully authorized to represent it in this arbitration:

King & Spalding L.L.P.
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Jennifer L. Price
1100 Louisiana
Suite 4000
Houston, Texas 77002
USA
Telephone: +1 713-751-3210
Facsimile: +1 713-751-3290
E-mail: jbowman @kslaw.com
jprice@kslaw.com

B. Respondent

19. Respondent is the Bolivarian Republic of Venezuela, a sovereign state and a Contracting Party to the Barbados/Venezuela BIT.[10]

20. To Claimant's knowledge, Venezuela has not yet appointed counsel in these proceedings. VUS gives notice of this arbitration to the Acting Solicitor General of Venezuela, Miguel Enrique Galindo Ballesteros, at:

> Miguel Enrique Galindo Ballesteros
> Procurador General (Encargado) de la República
> Av. Los Ilustres, cruce con Calle Francisco Lazo Martí
> Edificio Sede Procuraduría General de la República
> Urb. Santa Mónica, Caracas 1040
> Venezuela

With a copy to the Minister for Foreign Relations, Elías, Juau Milano, at:

> Elías Juau Milano
> Ministerio del Poder Popular para Relaciones Exteriores
> Esquina de Principal, Lado Oeste de la Plaza Bolivar
> 1010 Caracas
> Venezuela

III. THE ARBITRATION AGREEMENT AND JURISDICTION

21. Through Article 8 of the Barbados/Venezuela BIT, Venezuela irrevocably consented to arbitration of disputes between it and nationals or companies of Barbados who invested in Venezuela concerning an obligation of Venezuela under that BIT. Article 8 provides:

> 1. Disputes between one Contracting Party and a national or company of the other Contracting Party concerning an obligation of the former under this Agreement in relation to an investment of [the latter] shall, at the request of the national concerned, be submitted to the International Centre for the Settlement of Investment Disputes for settlement by arbitration or conciliation under the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, opened for signature at Washington on May 18, 1965.

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[10] The Republic of Venezuela changed its official name to the Bolivarian Republic of Venezuela pursuant to its Constitution adopted effective March 24, 2000. *See* Constitución de la Repùblica Bolivariana de Venezuela, Gaceta Oficial Extraordinaria N° 5.453 (March 24, 2000).

> 2. As long as the Republic of Venezuela has not become a Contracting State of the Convention as mentioned in paragraph 1 of this Article, disputes referred to in that paragraph shall be submitted to the International Centre for Settlement of Investment Disputes under the Rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (Additional Facility Rules). If for any reason the Additional Facility is not available the investor shall have the right to submit the dispute to arbitration under the rules of the United Nations Commission on International Trade Law (UNCITRAL).
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> 3. The arbitral award shall be limited to determining whether there is a breach by the Contracting Party concerning its obligations under this Agreement, whether such breach of obligations has caused damages to the national concerned, and if such is the case, the amount of compensation.
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> 4. Each Contracting Party hereby gives its unconditional consent to the submission of disputes referred to in paragraph 1 of this Article to international arbitration in accordance with the provisions of this Article.[11]

22. VUS, a Barbados company, and Venezuela have a dispute, legal in nature, that arises directly out of an investment by VUS in Venezuela, and which concerns Venezuela's breaches of its obligations under the bilateral investment treaty between Barbados and Venezuela with respect to protection of investments by nationals of one Contracting Party in the territory of the other.

23. Barbados signed the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the "Convention") on May 13, 1981. It deposited its ratification of the Convention on May 1, 1983, and the Convention entered into force with respect to Barbados on December 1, 1983.

24. When the Contracting Parties signed the Barbados/Venezuela BIT, Venezuela had not yet become a Contracting State to the Convention. Until Venezuela became a Contracting State to the Convention, the Contracting Parties provided in Article 8(2) of the BIT for the jurisdiction of the Additional Facility of the International Centre for the Settlement of Investment

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[11] Ex. C-1, Barbados/Venezuela BIT.

Disputes ("Additional Facility"). Although Venezuela became a Contracting State to the Convention effective June 1, 1995, it denounced the Convention on January 24, 2012, which denunciation became effective on July 25, 2012.

25. Pursuant to Article 8(2) of the BIT, an investor shall have the right to submit disputes to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law (the "UNCITRAL Rules") whenever a dispute could not be submitted to arbitration under the Convention or the Additional Facility Rules. Claimant VUS cannot submit this dispute to arbitration under the Convention because Venezuela denounced the Convention and its denunciation became effective prior to the date of this Notice of Arbitration. Claimant VUS cannot submit this dispute to arbitration under the Additional Facility Rules because the BIT only provided for arbitration under the Additional Facility Rules during the time period prior to Venezuela's becoming a Contracting State to the Convention, not after Venezuela denounced it. Accordingly, VUS commences this arbitration under the UNCITRAL Arbitration Rules as currently in effect.

26. The Barbados/Venezuela BIT does not contain a requirement of prior notice or a cooling-off period before instituting arbitration proceedings. Similarly, it does not require the investor party to seek local remedies or take recourse to other remedies prior to initiating arbitration.

IV. BACKGROUND OF CLAIMS

A. VUS's Investment in Venezuela

27. In 1993, Norcen, a Canadian corporation, joined the consortium formed to be the Contractor under the Oritupano Leona OSA, holding a 32.5% participating interest under that

agreement for its 20-year primary term, with Corpoven as the State-owned counterparty.[12] The international oil companies committed to invest a minimum of US$ 149,910,000 in the reactivation, development, production, treatment, and transportation of hydrocarbons from the Oritupano Leona block in Eastern Venezuela over the first three years of the contract, of which Norcen's investment share approximated US$ 48.7 million. Norcen received the benefits of its investment through a fee per barrel of oil produced, allowing it to recover capital investments, operating costs, and an incentive for increasing incremental production from the contract area.

28. In March 1998, Union Pacific Resources Group, Inc. ("Union Pacific"), acquired Norcen. In July 2000, Anadarko acquired Union Pacific, and thereby acquired Norcen's participating interest in the Oritupano Leona OSA. In 2002, Anadarko placed the Oritupano Leona investment in VUS, as a Delaware entity. On February 3, 2006, Anadarko reorganized VUS as a Barbados company.[13] VUS owns APC Venezuela, S.R.L., the local special purpose Venezuelan entity which is a party to the Conversion Contract along with VUS. The Venezuelan authorities duly registered and approved these transactions.[14]

29. As described below, VUS's predecessor-in-interest made its investment in Venezuela during a period in which Venezuela needed and actively encouraged foreign investment by international oil companies in Venezuela's oil sector. When it restructured and reaffirmed that investment in early 2006, VUS again relied upon the promises Venezuela made guaranteeing investment protection, including in Venezuela's treaties, laws, and contracts. Venezuela subsequently broke its promises and ignored its obligations, and VUS suffered greatly

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[12] Ex. C-4, Convenio de Servicios de Operación Oritupano Leona (Nov. 1, 1993).

[13] *See* Ex. C-6, Certificate of Organization and Certificate of Continuance of Venezuela US SRL (Feb. 3, 2006).

[14] *See* Ex. C-7, Registrador Mercantil Segundo de la Circunscripción Judicial del Estado Guarico (August 18, 1998); Ex. C-8, Ministerio del Interior y Justicia, Registro Mercantil Quarto de la Circunscription Judicial del Distrito Federal y Estado Miranda (Sept. 10, 2002). Venezuelan law did not require an entry into the Mercantile Registry for the 2006 reorganization of VUS.

as a result. To be clear, while VUS sets out the history of its investment in Venezuela and the events leading to the current dispute, VUS asserts claims only for events and harm occurring after its February 2006 restructuring giving it the protection of the Barbados/Venezuela BIT.

B. Venezuela and Its State Entities: PDVSA, CVP, PDVSA Social, PDVSA Petróleo, and Petroritupano

30. Venezuela created its national companies PDVSA and CVP as tools to allow it to exercise control over the hydrocarbons and energy sectors in Venezuela. It continues to use those tools and their affiliates to exercise governmental authority and dominate all aspects of hydrocarbons exploration, development, production, refining, and sale in Venezuela. PDVSA and its affiliates are organs of the State, and their actions are fully attributable to Venezuela.

31. Venezuela has substantial hydrocarbons reserves and by the 1930s, with the investment of foreign oil companies, had become a major oil producer. While Venezuela initially welcomed foreign investors, over time, with changing governments, Venezuela changed the terms and conditions of foreign participation in its oil sector. A series of unfavorable Government actions in the late 1960s and early 1970s led the international oil companies to reduce their capital investments in Venezuela, including in existing projects. In August 1975, Venezuela adopted a law formally nationalizing the Venezuelan oil industry.

32. On August 30, 1975, the day after the nationalization decree, Venezuela formed PDVSA as the national oil company.[15] PDVSA's mission was, and today remains, to control and operate all aspects of Venezuela's petroleum industry. The Venezuelan Constitution adopted in 2000 requires the State to own and to control PDVSA. Article 303 of that Constitution provides:

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[15] Ex. C-9, Presidential Decree No. 1.123, Gaceta Oficial No. 1.770 Extraordinario (Aug. 30, 1975) (PDVSA articles of incorporation). *See also* Ex. C-10, excerpt from PDVSA website, "*Acerca de PDVSA: Historia: De la privatización a la nacionalización de la industria petrolera en Venezuela*," available at http://www.pdvsa.com (last visited March 20, 2013). *See also* Daniel Yergin, THE PRIZE 630-32 (2d ed. 2008).

"For reasons of economic and political sovereignty and national strategy, the State shall retain all shares" of PDVSA.[16]

33. PDVSA describes itself and its actions as expressions of the economic and political sovereignty of the Government and the Venezuelan people:

> Petróleos de Venezuela, S.A., the state-owned corporation of the Bolivarian Republic of Venezuela, is responsible for the efficient, profitable, and dependable exploration, production, refining, transport and commerce of hydrocarbons. . . .
>
> The Venezuelan State is PDVSA's sole stockholder under the provisions of the Constitution of the Bolivarian Republic of Venezuela and represents the economic and political sovereignty exerted by the Venezuelan people over oil, their major energy resource.
>
> Therefore, its actions must follow the Ministry of Energy and Petroleum's guidelines, plans and strategies, as well as the norms issued by the National Development Plans for hydrocarbons.[17]

PDVSA acknowledges that the Minister of Energy and Petroleum supervises and controls its operations.[18] The PDVSA website prominently bears the logos of both PDVSA and of the "Gobierno Bolivariano de Venezuela."

34. A wholly State-owned and controlled PDVSA affiliate, CVP, owns the controlling interest in Petroritupano. Initially created in April 1960 as an *instituto autónomo*, in 1975 Venezuela transformed CVP into a wholly State-owned and controlled corporation as part

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[16] Constitución de la República Bolivariana de Venezuela art. 303, Gaceta Oficial Extraordinaria N° 5.453 (24 de marzo de 2000) ("Por razones de soberanía económica, política y de estrategia nacional, el Estado conservará la totalidad de las acciones de Petróleos de Venezuela, S.A., o del ente creado para el manejo de la industria petrolera, exceptuando las de las filiales, asociaciones estratégicas, empresas y cualquier otra que se haya constituido o se constituya como consecuencia del desarrollo de negocios de Petróleos de Venezuela, S.A.").

[17] Ex. C-11, excerpt from PDVSA website (English version), "*About PDVSA.: Petróleos de Venezuela*," available at http://www.pdvsa.com (last visited March 20, 2013).

[18] Ex. C-11, excerpt from PDVSA website (Spanish version), "*Acerca de PDVSA: Petróleos de Venezuela*," available at http://www.pdvsa.com (last visited March 20, 2013) ("Sus operaciones son supervisadas y controladas por el Ministerio del Poder Popular para la Energía y Petróleo (MENPET)").

of the first nationalization of the oil industry.[19] The GOV and PDVSA "reactivated" CVP in 2003 as a PDVSA affiliate to hold Venezuela's and PDVSA's interests as the controlling interest owner in the mixed companies.[20] CVP identifies itself in its correspondence as "PDVSA CVP, filial de Petróleos de Venezuela, S.A."[21]

35. By a Decree Law issued in 2012, Venezuela required CVP to cede 4% of its shares in each of the mixed companies to another PDVSA entity, PDVSA Social, S.A. ("PDVSA Social"). This formalized the GOV's longstanding practice of funding social and workers' programs with PDVSA revenues, decreeing that PDVSA Social will fund the GOV's existing and future debt to those programs through the assigned interests in the mixed companies and a share of royalties from other PDVSA joint ventures.[22] By letter dated 17 October 2012, PDVSA CVP notified VUS that CVP was transferring 4% of its shares in Petroritupano to PDVSA Social, as the GOV decreed.[23]

36. Under the Hydrocarbons Law, only PDVSA or an affiliate it designates may buy the oil produced by a mixed company. In accordance with that mandate, PDVSA Petróleo buys the oil Petroritupano produces under a Hydrocarbons Purchase and Sale Contract. The State created PDVSA Petróleo (then known as Corpoven) in 1978, and it remains a wholly-owned and controlled PDVSA affiliate. Its board members are appointed, and may be dismissed by, PDVSA.[24] Since it is 100% State-owned, its funds are considered public funds.[25] As PDVSA's

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[19] Presidential Decree No. 260 (April 19, 1960); Presidential Decree No 1127 (Sept. 2, 1975).

[20] Ex. C-12, excerpt from PDVSA website , "*Negocios y filiales: La CVP y las Empresas Mixtas*," available at http://www.pdvsa.com (last visited March 20, 2013).

[21] *See*, for example, Ex. C-18, Letter from "PDVSA CVP" (E. Del Pino) to VUS (S. Akers) (17 Oct. 2012).

[22] Ex. C-17, Decreto con Rango, Valor y Fuerza de Ley Orgánica relativa al Fondo de Ahorro Nacional de la Clase Obrera y al Fondo de Ahorro Popular, Gaceta Oficial No. 39,915 (4 May 2012).

[23] Ex. C-18, Letter from PDVSA CVP (E. Del Pino) to VUS (S. Akers) (17 Oct. 2012).

[24] *See* Ex. C-9, PDVSA Petróleo, S.A. Articles of Incorporation arts. 9, 12, and 35.

affiliate, it carries out activities of exploration and exploitation of hydrocarbons, which are activities reserved to the State.[26]

37. The Venezuelan Organic Law of Public Administration ("OLPA") establishes that each State-owned company is controlled by a State Ministry, assigned by the President of the Republic.[27] PDVSA, CVP, PDVSA Petróleo, and Petroritupano are all under the supervision and control of the Ministry of the Popular Power for Energy and Petroleum (formerly known as the Ministry of Energy and Petroleum).

38. Article 46 of the OLPA establishes that the Ministry must guide the policies to be developed by the State-owned companies, as well as exercise coordination and control functions over them. State-owned companies must follow goals and objectives conforming to the policies and strategies established by the State through the President of the Republic and implemented by the Ministry in charge of the company. The Ministry has express power: (i) to define the company's policies; (ii) to exercise coordination, supervision, and control functions over the company on a permanent basis; (iii) to evaluate, on a continuous basis, the company's performance and management and report to the President of the Republic; (iv) to inform the national planning entity, on a quarterly basis, of the company's execution of its plans; and (v) to propose to the President of the Republic any necessary modifications to create, modify, or eliminate the State-owned company.[28]

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[25] *See id.* art. 3.

[26] *See id.* art. 2; Hydrocarbons Law art. 1; Venezuelan Constitution art. 302.

[27] Ex. C-16, Codigo Organico Tributario art. 116, Gaceta Oficial No. 37305 (Oct. 17, 2001).

[28] *See id.* arts. 76, 83.

39. PDVSA and its affiliates, including CVP, PDVSA Petróleo, and Petroritupano, clearly are and act as organs of the Government of Venezuela.[29] They are authorized to, and do in fact, exercise governmental authority, and they act with respect to Petroritupano and VUS in the exercise of that governmental authority.[30] Further, even if they could be considered private corporations, they act under the instruction, direction, or control of the State.[31]

C. The Opening and Closing of the Oil Sector in Venezuela

1. The *Apertura Petrolera*

40. VUS's predecessor-in-interest invested in Venezuela during the "*apertura petrolera*" (petroleum opening), a period from the early 1990s through early 2000s during which Venezuela actively encouraged foreign investment of funds, technology, and expertise in the oil sector by promising a stable fiscal and regulatory regime, offering special contracts with attractive terms, and entering into investment treaties to protect the rights of foreign investors against government interference and provide a fair framework for foreign direct investment.

41. PDVSA and the Energy Ministry invited foreign oil companies (and a few private Venezuelan companies) to participate in upstream activities. The *apertura petrolera* regime included three types of contractual relationships: (i) Operating Services Agreements for the reactivation of marginal oil fields, (ii) Profit Sharing Agreements for exploration and production in new areas, and (iii) Strategic Associations to produce and upgrade extra-heavy crude from the Orinoco Basin. Under the Operating Services Agreements, the contractors were in charge of construction of infrastructure and implementation of all works required to increase production

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[29] *See* International Law Commission Articles on State Responsibility art. 4 (2001) [hereinafter, "ILC Articles on State Responsibility"]; James Crawford, THE INTERNATIONAL LAW COMMISSION'S ARTICLES ON STATE RESPONSIBILITY: INTRODUCTION, TEXT AND COMMENTARIES 94, ¶ 1 (Cambridge Univ. Press 2002).

[30] *See* ILC Articles on State Responsibility art. 5.

[31] *See id.* art. 8.

from the reservoirs, at their cost and risk, but they did not hold any ownership interest in the hydrocarbons. The relevant PDVSA affiliate paid the contractor fees per barrel for the oil and gas produced and delivered under the contract, to account for capital investment and operating costs, and also paid an incentive fee for incremental production improvements.[32]

42. Using this framework, Venezuela successfully attracted substantial international oil company investment in its oil sector, including that by VUS's predecessor-in-interest. Also important to attracting foreign investment, during this period PDVSA acted largely as a commercial company despite its State ownership. It operated relatively independently, with a focus on being an efficient and successful integrated energy company similar to large non-State owned international oil companies. However, all this soon came to an end with the election of Hugo Chávez as Venezuela's president in 1999.

2. The "True Oil Nationalization"

43. Soon after taking office, President Chávez set about closing the *apertura petrolera*. He began a process of exerting repressive State control over PDVSA and taking back rights from the foreign oil companies who by that time had heavily invested in Venezuela. In 2000, Venezuela adopted a new Constitution which declared that the "State reserves to itself, through the pertinent organic law, and for reasons of national expediency, the petroleum industry . . . ."[33] The following year, the GOV adopted the Hydrocarbons Law (amended in 2006),

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[32] *See*, for example, Ex. C-4, Oritupano Leona OSA arts. 1.5, 6, 8.

[33] Article 302, Constitución de la República Bolivariana de Venezuela, Gaceta Oficial Extraordinaria N° 5.453 (24 de marzo de 2000) (Unofficial translation from PDVSA website (English version), "*About PDVSA: Legal Framework: Constitution of the Bolivarian Republic of Venezuela*," available at http://www.pdvsa.com/ (last visited March 20, 2013).

providing that the Ministry of Energy and Petroleum has competence in all matters associated with the administration of hydrocarbons.[34]

44. The international oil companies, organized through a special committee of the Venezuelan American Chamber of Commerce, were allowed to comment on the draft law, and requested that it include a grandfather clause that would ensure the rights granted under existing contracts be respected under the new law. However, the GOV did not include such a clause in the Hydrocarbons Law as adopted.

45. From December 2002 through February 2003, many of those Venezuelans opposing the Chávez regime, and particularly its new oil policies, engaged in a nationwide work stoppage (*paro*) that nearly put a stop to operations in the oil sector. In January 2003, President Chávez reacted by declaring the beginning of a "true oil nationalization" by which the GOV would assume full control of all aspects of the oil industry in Venezuela.[35] The GOV made massive and plenary changes in PDVSA, removing all PDVSA executives and employees who participated in the work stoppage or were deemed not to support the Chávez regime and its plans for the transformation and control of PDVSA and the oil sector.[36] In November 2004, President Chávez appointed the Minister of Energy and Petroleum, Rafael Ramirez, to serve

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[34] Ex. C-5, Ley Orgánica de Hidrocarburos arts. 8, 22, Decree N° 1510 (Nov. 2, 2001), published in Gaceta Oficial No. 37,323 (Nov. 13, 2001). The 2001 Hydrocarbons Law was amended by the Ley de Reforma Parcial del Decreto N° 1510 con Fuerza de Ley Orgánica de Hidrocarburos, Gaceta Oficial N° 38,443 (May 6, 2006) (Ex. C-5(A)), further amended by the Ley de Reforma Parcial del Decreto N° 1510 con Fuerza de Ley Orgánica de Hidrocarburos, Gaceta Oficial N° 38,493 (Aug. 4, 2006) (Ex. C-5(B)).

[35] Ex. C-13, excerpt from PDVSA website (English version), *About PDVSA: History: The new oil policy*, available at http://www.pdvsa.com (last visited March 20, 2013).

[36] *See* Daniel Yergin, THE QUEST 129-32 (2011). The PDVSA website contains its own description of the situation leading to and during the 2002-2003 *paro*. Ex. C-14, excerpt from PDVSA website, "*Acerca de PDVSA: Historia: El sabotaje contra la industria petrolera nacional*," available at: http://www.pdvsa.com/ (last visited March 20, 2013).

simultaneously as PDVSA's President, dual positions Mr. Ramirez still holds today.[37] Venezuela used, and continues to use, PDVSA and its affiliates to exercise the GOV's "full command" over the oil industry.[38]

46. Prior to 2004, the GOV's longstanding understanding and practice with respect to the tax treatment of the Operating Service Agreements was that the OSAs were, consistent with their express terms, service contracts and that the private oil companies were contractors who delivered crude oil to PDVSA's affiliates but held no ownership interest in the oil. As service providers, the contractors were subject to a 34% income tax rate. In 2004, the GOV created a special division of the Venezuelan Tax Authority (*Servicio Nacional Integrado de Administración Aduanera y Tributaria*, or "SENIAT") called the Division for Auditing of Mining and Hydrocarbons. In contrast to the prior practice, SENIAT and the GOV concluded that the OSAs, including the Oritupano Leona OSA, were really disguised concession contracts for the production of crude oil and therefore the income received by contractors under those agreements should be taxed at the income tax rate applicable to entities carrying out liquid hydrocarbons activities, at that time 50%.[39] SENIAT and the GOV also rejected applicable deductions and exchange rate calculations and retroactively imposed this new interpretation and tax rate on all contractors under OSAs for the prior four years, increasing the adverse impact of this reinterpretation on the contractors.

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[37] Effective in January 2005, the Ministry of Energy and Mines became known as the Ministry of Energy and Petroleum.

[38] Ex. C-15, excerpt from PDVSA website, "*Plena soberanía, Auténtica nacionalización*," available at www.pdvsa.com (last visited March 20, 2013).

[39] *See* Report presented by the Ministry of Energy and Petroleum to the National Assembly in March 2006 addressing the Policy of Migration of the Operating Agreements into Mixed Companies, No. 3 – Fiscal Participation, § 3.1, Income Tax.

47. In 2005, this "true oil nationalization" culminated in the GOV's declaring the existing investments by international oil companies illegal and mandating that they must be reconstituted in a form in which the State could exercise complete control over them.

3. Required "Migration" from Operating Services Agreements to Mixed Companies

48. The 2001 Hydrocarbons Law provides that the "primary activities" of exploration and production of hydrocarbons "shall be performed by the State, either directly through the National Executive or through exclusively owned companies."[40] The National Executive may engage in those activities through "mixed companies" (*empresas mixtas*) in which the State exercises decision-making authority and control through ownership of more than 50% of the company's equity interest.[41] The mixed company must meet certain prescribed conditions and its creation requires National Assembly approval.[42] And, the mixed company must sell the hydrocarbons produced only to companies that are 100% owned by the State, meaning either PDVSA or one of its designated subsidiaries.[43]

49. By Instruction Letter dated April 12, 2005, the GOV, through Energy Minister (and PDVSA President) Rafael Ramirez, unilaterally declared that all Operating Services Agreements entered into during the *apertura petrolera* between 1992 and 1997 were illegal under the 2001 Hydrocarbons Law. Venezuela required that all investments under OSAs must

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[40] Ex. C-5, Hydrocarbons Law art. 22 ("Las actividades primarias indicadas en el artículo 9 de esta Ley, serán realizadas por el Estado, ya directamente por el Ejecutivo Nacional o mediante empresas de su exclusiva propiedad. Igualmente podrá hacerlo mediante empresas donde tenga control de sus decisiones, por mantener una participación mayor del cincuenta por ciento (50%) del capital social, las cuales a los efectos de esta Ley se denominan empresas mixtas. Las empresas que se dediquen a la realización de actividades primarias serán empresas operadoras.").

[41] *Id.* Article 1.3 of the Conversion Contract recites that, "[c]onforme a lo dispuesto en la Ley Orgánica de Hidrocarburos, el Estado, directamente o mediante empresas o entidades de su exclusiva propiedad, deberá en todo momento ser dueño de una participación mayor al cincuenta por ciento (50%) del capital accionario de la Empresa Mixta." Ex. C-2, Conversion Contract art. 1.3.

[42] Ex. C-5, Hydrocarbons Law arts. 33, 34.

[43] *Id.* arts. 27, 57.

"migrate" to the mixed company (*empresa mixta*) structure within six months, and declared that the only legal form of participation by foreigners in the Venezuelan hydrocarbons sector is as a minority shareholder in a mixed company controlled by a State enterprise.[44]

50. Venezuela required the contractors to execute "Transitory Agreements" addressing the migration from OSAs to mixed companies. It required that the contractors agree, among other things, that: (i) service fees from 2005 forward would be calculated on the basis of not more than 66.67% of the value of the delivered crude oil on an annual basis, rather than 100% of the oil value as provided by the OSAs, (ii) the contractors agreed to pay the retroactive tax assessments imposed by the tax authorities without protest, and (iii) the contractors would negotiate in good faith the terms and conditions of the migration from the OSA into the mixed company form. The Contractors to the Oritupano Leona OSA executed the compulsory Transitory Agreement with PDVSA Petróleo on Sept. 29, 2005.[45]

51. At that point, foreign investors in the Venezuelan oil sector had little choice in their course of action. They could either refuse the migration, effectively abandoning their investment, and seek redress under whatever form of recourse might be available, or they could continue to work with Venezuela and allow the migration, with the expectation that Venezuela would abide by its promises and permit them to continue to recover on and enjoy the value, albeit diminished, of their investments. Anadarko and VUS chose the latter course.

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[44] *See* Ex. C-19, Instruction Letter (April 12, 2005), citing Ley Orgánica de Hidrocarburos arts. 9, 22, 33, Decree No. 1510 (Nov. 2, 2001), published in Gaceta Oficial No. 37,323 (Nov. 13, 2001).

[45] *See* Ex. C-20, Transitory Agreement between Petrobras Energía Venezuela, S.A., ACP Venezuela, S.R.L., Corod Producción S.A., and PDVSA Petróleo S.A. (Sept. 29 2005). Energy Minister Rafael Ramirez executed the Transitory Agreement on behalf of PDVSA Petróleo in his capacity as its President.

D. Venezuela's Forced Reorganization of VUS's Investment

1. Creation of Petroritupano

52. As described above, Anadarko placed its Ortiupano Leona investment in VUS in 2002 and reorganized VUS as a Barbados company on February 23, 2006. In late March 2006, Venezuela presented the foreign investors with a draft Memorandum of Understanding ("the MOU") concerning the migration of VUS's investment from the OSA into an interest in a new mixed company, Petroritupano. The MOU included a number of attachments required for the creation of the new company, including forms of necessary government approvals.

53. On April 18, 2006, Venezuela amended the Hydrocarbons Law to state that Operating Services Agreements were illegal and extinguished and that PDVSA would assume their operations either directly or through mixed companies.[46] This amendment enacted into law the GOV's previous instruction that the OSAs were illegal and must be replaced with mixed companies.

54. On August 3, 2006, the parties to the Oritupano Leona OSA entered into a "Contract for the Conversion to a Mixed Company, Petroritupano, S.A."[47] As required by the Hydrocarbons Law, a wholly State-owned and controlled company, CVP, holds all of the Class A shares, a total of 60% of the company's equity ownership interest, and has operating and managing control over the company. VUS holds 18,000 Class B shares, representing 18% of the remaining equity interest in Petroritupano. Petrobras Argentina, S.A., an indirect subsidiary of Brazil's national oil company, originally held 18% of the equity interest in Class B shares, and

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[46] *See* Ex. C-21, Ley de Regularización de la Participación Privada en las Actividades Primarias Previstas en El Decreto No. 1.1510 con Fuerza de Ley Organica de Hidrocarburos, Gaceta Oficial No. 38.419 (April 18, 2006).

[47] Ex. C-2, Conversion Contract. *See also* Ex. C-3, Petroritupano Articles of Incorporation, Registro Mercantil, Gaceta Oficial No. 38,518 (Sept. 8, 2006).

eventually acquired the remaining 4% by transfer from its affiliate, Corod Producción, S.A., for a total of 22%.[48]

55. Venezuela approved the creation of Petroritupano and the terms of the Conversion Contract through official documents issued by the National Assembly and the Energy Ministry, and a decree issued by the President of Venezuela.[49] State representatives dominate Petroritupano's management. PDVSA and its affiliate CVP, acting on behalf of the GOV, appoint the majority of Petroritupano's board of directors, as well as its president (six to date) and other management. Venezuela, through its State organs PDVSA and its affiliates, controls Petroritupano's daily operations, as well as its finances.

56. As mandated by the Hydrocarbons Law, the Conversion Contract provides that Petroritupano's produced oil must be sold to PDVSA Petróleo.[50] According to the Hydrocarbons Purchase and Sale Contract, Petroritupano issues an invoice each month for the hydrocarbons delivered in accordance with that contract, and PDVSA Petróleo pays Petroritupano the amounts for those hydrocarbons as calculated by a formula in Annex A to that agreement.[51] PDVSA Petróleo must pay Petroritupano the amounts due under the monthly invoices, in US dollars for oil and Bolivars for methane, by wire transfer in immediately available funds, without any set-off

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[48] Petrobras Argentina, S.A. was formerly known as Petrobras Energía, S.A., and prior to that as Petrobras Energía Venezuela, S.A.

[49] Ex. C-2(A), Conversion Contract Annex A, Accuerdo de la Asamblea Nacional, Gaceta Oficial N° 38.430 (5 May 2006); Ex. C-2(B), Conversion Contract Annex B, Resolución del Ministerio de Energía y Petróleo, Gaceta Oficial N° 38.462 (20 June 2006); Ex. C-2(C), Conversion Contract Annex C, Decreto de Creación, Decreto N° 4.588, Gaceta Oficial N° 38.464 (22 June 2006). *See also* Ex. C-2(F), Conversion Contract Annex F, Decreto N° 4.798 mediante el cual se transfiere a la empresa Petroritupano, S.A., el derecho a desarrollar las actividades primarias de exploracion que en él se señalan, Gaceta Oficial N° 38.533 (29 Sept. 2006).

[50] Ex. C-2, Conversion Contract art. 3.

[51] Ex. C-2(K), Conversion Contract Annex K, draft Contrato de Compraventa de Hidrocarbures arts. 4, 5 (June 2006). VUS does not have an executed copy of the Hydrocarbons Purchase and Sale Contract between Petroritupano and PDVSA Petróleo.

or discount.[52] As set out below, as part of a scheme by the GOV to deprive VUS of the promised return on its investment, PDVSA Petróleo has failed to pay hundreds of millions of dollars due and owing to Petroritupano for hydrocarbons delivered to PDVSA Petróleo, instead retaining those funds for the GOV's use.

2. Venezuela Denies Anadarko Approval to Sell Its Interest in Petroritupano

57. In early 2007, Anadarko, VUS's ultimate parent company, engaged in a bidding process to sell its interest in VUS's sole shareholder Anadarko Venezuela Company, with the goal to sell its interest in Petroritupano and exit the increasingly toxic investment environment in Venezuela. Although the forced migration to the mixed company had significantly decreased the valuation of that investment, Anadarko found a qualified buyer who already had substantial operations in Venezuela, PetroFalcon Corporation. On April 4, 2008, Anadarko Venezuela LLC entered into a binding purchase and sale agreement by which PetroFalcon would acquire 100% of the shares of Anadarko Venezuela Company for US$ 200 million.

58. Anadarko was required under Article 6.3 of the Conversion Contract to obtain the Minister of Energy and Petroleum's written consent to the sale to PetroFalcon. Believing this approval would prove to be a formality, given PetroFalcon's corporate solidity and its existing presence in Venezuela, the parties notified the Ministry and PDVSA/CVP of the proposed sale.[53] However, in an August 14, 2008 e-mail, CVP notified Anadarko that it wanted to acquire Anadarko Venezuela Company.[54] Weeks later, Energy Minister (and PDVSA President) Rafael

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[52] *Id.* art. 5 (PPSA deberá pagar cada factura mediante transferencia electrónica).

[53] *See* Ex. C-22, Letter from L. Derrota (VUS) top Minister R. Ramirez (June 11, 2008); Ex. C-23, Letter from J.F. Clerico (PetroFalcon) to E. Del Pino (PDVSA/CVP) (July 4, 2008).

[54] *See* Ex. C-24, E-mail from E. Del Pino (PDVSA/CVP) to T. Heinzler (VUS) (Aug. 14, 2008).

Ramirez formally denied consent for the sale to PetroFalcon.[55] After this unjustified denial of consent killed its firm agreement with PetroFalcon, Anadarko followed up on CVP's expression of interest and on October 15, 2008, made a formal proposal to sell Anadarko Venezuela Company to CVP.[56] However, CVP never responded to that proposal or to repeated attempts by Anadarko over the following months to communicate about it. Venezuela thereby denied Anadarko the opportunity to monetize and gain some current return on its already devalued investment.

59. Despite Venezuela's denying Anadarko its opportunity to obtain a return on its VUS investment, Anadarko continued to work with the GOV and PDVSA to maintain the Oritupano Leona operations. Under PDVSA's mismanagement and control, however, the Oritupano Leona fields, wells, and operational facilities have deteriorated, resulting in reduced production of hydrocarbons and unnecessary diminution of the value of VUS's investment. Venezuela has further impaired and deprived VUS of its investment by its acts and omissions in direct breach of Venezuela's obligations under the Barbados/Venezuela BIT.

E. Venezuela's Expropriation of VUS's Investment, Unfair and Inequitable Treatment of VUS, and Discrimination Against VUS

1. Failure to Pay Dividends Due and Owing for 2008 and 2009

60. Acting on behalf of and under the control of Venezuela, PDVSA and its affiliates failed to distribute dividends due and owing to VUS for the contract years 2008 and 2009.

61. Given that after the conversion to the mixed company, the foreign investors' only source of income from their investment would be from dividends, the parties negotiated those issues at length during the migration process and agreed on provisions to ensure the foreign

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[55] *See* Ex. C-25, Letter from Minister R. Ramirez to Anadarko (L. Derrota) (Sept. 17, 2008).

[56] *See* Ex. C-26, Letter from A. Richey (VUS) to E. Del Pino (PDVSA/CVP) (Oct. 15 2008).

investors' rights. Pursuant to Article 32 of the Petroritupano Articles of Incorporation, the company's policy is to pay dividends to the extent possible given the statutory limitation established by Article 307 of the Venezuelan Commercial Code that dividends may only be issued if sufficient liquid and collected profits exist. If those requirements are met, the shareholders have the right to receive such dividends.

62. On August 17, 2009, the Petroritupano shareholders, recognizing that the legal conditions for payment of dividends were satisfied, approved and declared payment of total dividends of US$ 245,328,710.39 for fiscal year 2008, to be paid to the shareholders as their sole source of compensation for their investment. VUS's share of the total declared and approved dividends for 2008 is US$ 44,159,167.87. On November 23, 2010, the Petroritupano shareholders approved and declared dividends of US$ 81,731,834.50 for fiscal year 2009, of which VUS's share is US$ 14,711,730.27. PDVSA/CVP, however, acting on behalf of and as part of the Venezuelan State, failed and refused, and continues to fail and refuse, to distribute these due and owing dividends to VUS.[57]

63. The Petroritupano shareholders approved and signed the Minutes of the August 17, 2009 shareholders' meeting declaring the 2008 dividends that same day. PDVSA/CVP, however, intentionally delayed their finalization. PDVSA/CVP also intentionally failed to finalize the approved Minutes of the November 23, 2010 Petroritupano shareholders meeting at which the shareholders declared the dividends for fiscal year 2009. At a Petroritupano Board of Directors meeting on May 19, 2011, PDVSA/CVP reported that the Minutes of the 2009 meeting were in the hands of CVP president Eulogio Del Pino for signature and finalization, and that it

[57] While PDVSA and CVP are legally separate entities, PDVSA frequently acts in CVP's stead with respect to Petroritupano, and it is often difficult to discern which entity is responsible for which actions. Also, while PDVSA and CVP are separate entities from Petroritupano, CVP Corporate pays dividends on behalf of its affiliate Petroritupano.

had submitted the Minutes of the 2010 meeting to PDVSA/CVP's legal and finance departments for their approval.[58] At that same meeting, however, PDVSA/CVP revealed that it planned to pay Petrobras Argentina – but not VUS – its share of the 2008 and 2009 dividends. This shockingly discriminatory action resulted directly from Venezuela's desire to curry favor with the Government of Brazil.

64. Venezuela's then-President Hugo Chávez planned an official State visit to Brazil for early June 2011, with a subsequent visit of the Brazilian President to Venezuela for a meeting of the Community of Latin American and Caribbean States set for early July, during which Venezuela planned to execute several cooperation and commercial agreements with Brazil.[59] At the May 19, 2011 Petroritupano Board of Directors meeting, PDVSA/CVP reported to the shareholders that it had received funds from "CVP Corporate" and planned to proceed with payment of the declared 2008 and 2009 dividends to Petrobras Argentina. To VUS's understanding and belief, PDVSA/CVP thereafter paid Petrobras Argentina approximately US$ 72 million, representing Petrobras Argentina's share of the outstanding Petroritupano dividends for 2008 through 2009. Despite repeated inquires, requests, and protests from VUS, PDVSA/CVP refuses to pay VUS its shares of those dividends. In this regard, PDVSA and its affiliates act as part of, on behalf of, and under the control of the GOV.

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[58] *See* Ex. C-27, PDVSA PowerPoint presentation, Petroritupano Board of Directors Meeting (19 May 2011), slides 92-93.

[59] *See e.g.*, Ex. C-28, VenezuelaAnalysis.com, "Venezuela and Brazil Deepen Strategic Cooperation" (7 June 2011), available at http://venezuelanalysis.com/news/6255 (last visited 21 March 2013); Ex. C-29, El Universal, "Brazilian President to Visit Caracas in July" (11 May 2011), available at http://www.eluniversal.com/2011/05/11/brazilian-president-to-visit-caracas-in-july.shtml (last visited 21 March 2013); Ex. C-30, Xinhuanet, "Chavez Confirms June Visit to Brazil" (25 May 2011), available at http://news.xinhuanet.com/english2010/world/2011-05/25/c_13893025.htm (last visited 21 March 2013).

2. Fraudulent Denial of Returns On Investment for 2010 and 2011

65. Venezuela took a different approach in denying VUS the value of and returns on its investment for fiscal years 2010 and 2011. Instead of Petroritupano's declaring dividends and then refusing to pay them, Venezuela used its State organs and its control over the purchase and sale of the oil produced by Petroritupano in an attempt to make it appear that Petroritupano had suffered a loss resulting in no dividends due for those years. It did this by the simple expedient of not paying Petroritupano for the oil PDVSA Petróleo takes. At the same time, having starved Petroritupano of cash flow, PDVSA allegedly "advanced" substantial funds to Petroritupano to pay for operating expenses, creating illusory "loans" that compounded the injury to the other shareholders. Petroritupano's financial statements, which PDVSA/CVP prepared, reveal other irregularities, all of which reflect items purportedly contributing to losses for Petroritupano. In taking these actions, PDVSA/CVP acted on behalf of the State and unilaterally, without disclosure to VUS.

66. At the May 17, 2011 Petroritupano Board of Directors meeting, PDVSA/CVP distributed what it purported to be a summary of Petroritupano's financial performance in 2010.[60] According to that summary, in 2010 Petroritupano had income of US$ 507.1 million from crude oil sales but supposedly incurred a net loss of US$ 243.4 million. The data PDVSA/CVP provided to the other Shareholders did not explicitly address the hundreds of millions of dollars PDVSA Petróleo owed for oil it received under the Hydrocarbons Purchase

[60] *See* Ex. C-27, PDVSA PowerPoint presentation, slides 97-98, Petroritupano Board of Directors meeting (19 May 2011). PDVSA/CVP reported proceeds from sale of crude oil of approximately US$ 507.1 million. The presentation did not specify whether those proceeds from oil sales had actually been received or had been booked but not received, but Anadarko understands that PDVSA received the proceeds from the ultimate buyers to whom it resold the oil, but never transmitted those funds to Petroritupano. As reported, these proceeds were against US$ 95.1 MM in operational costs, US$ 53.4 MM in depreciation and amortization, US$ 10.4 in general and administrative expenses, US$ 57 MM in "currency fluctuations," US$ 175.6 MM in royalties and other taxes, US$ 42.3 MM in "financial expenses," US$ 5.9 million for "other net expenses," and US $ 310.8 in income tax.

and Sale Agreement. However, PDVSA/CVP advised VUS and Petrobras Argentina that PDVSA Petróleo owed Petroritupano at least US$ 682 million for oil as of the end of 2010 – equal to approximately 134% of Petroritupano's annual revenue. CVP did not make any apparent effort to collect those amounts, and compounded the harm by deciding (as Petroritupano's majority shareholder) that Petroritupano would not pursue collection of contractual interest on those delayed payments and would offer PDVSA Petróleo a discount on the outstanding amounts due.

67. At the same time as PDVSA Petróleo owed Petroritupano hundreds of millions of dollars, PDVSA made and CVP (on behalf of Petroritupano) accepted loan(s) to pay for operational expenses. It did so without shareholder consent and without providing details of the terms of the loan(s).[61] As part of its efforts to make it appear that Petroritupano lost money, PDVSA/CVP reported that in 2010 Petroritupano paid US$ 42.3 million in "financial costs," of which at least US$ 25 million were apparently attributable to the PDVSA loan(s).

68. Acting as State organs and under the control of the State, PDVSA made and CVP/Petroritupano accepted these "loans" without VUS's knowledge or approval. PDVSA/CVP has not provided VUS with any documentation of the "loans" or the "charges" allegedly incurred beyond summary financial statements. Venezuela apparently designed this scheme to saddle Petroritupano with debt and generate "fees and interest" in order to deny the foreign investors the dividends owed to them.

69. Venezuela, through PDVSA/CVP, continued with this scheme through 2011. Due to PDVSA Petróleo's failure to pay for Petroritupano-produced oil, PDVSA/CVP reported to the Board of Directors and Shareholders that Petroritupano had suffered a loss in 2011.

[61] Article 16(ii)(f) of Petroritupano's Articles of Incorporation (Ex. C-3) provide that contracting of loans in excess of US$ 10 million requires the approval of a qualified majority of shareholders representing 75% of the corporate capital. PDVSA/CVP neither requested nor received such approval from the Petroritupano Shareholders.

Therefore, according to PDVSA/CVP, Petroritupano again could not declare any dividends.[62] VUS does not know how much PDVSA Petróleo currently owes Petroritupano for oil.

70. Petroritupano's financial statements reflect other irregularities that indicate the company's financial performance may be misstated. These include much higher operating expenses for 2010 relative to other years and an income tax bill that is over 450% of pre-tax income. PDVSA/CVP has not provided VUS with information to allow it to fully evaluate these irregularities.

71. Venezuela uses the fiction of separation between itself and its State enterprises as an excuse to avoid paying dividends owed the foreign shareholders in Petroritupano as returns on their investments, and in this way unfairly and inequitably denies VUS the value of and returns on its investment.

3. Destroying the Value of the Investment Through Mismanagement

72. Under the OSA in place prior to the required migration to the mixed company, Petrobras successfully operated the Oritupano Leona fields as part of a consortium including VUS's predecessor. In 2005, the last full year before the migration and while Petrobras was still the operator, the Oritupano Leona fields produced approximately 53,700 barrels of oil equivalent per day ("BOEPD"). Upon the migration in 2006, PDVSA/CVP took over as the operator. Oritupano Leona maintained its production levels through at least a part of that year, but production soon began to decline precipitously.

73. PDVSA and its affiliates act on behalf of the State in managing exploration and production of hydrocarbons in Venezuela and operating the Oritupano Leona fields. PDVSA

[62] Brazil successfully leveraged its power as a sovereign nation to pressure Venezuela to pay Petrobras, Brazil's national oil company, the dividends due and owing for 2008 and 2009. Even Brazil's power, however, could apparently not convince Venezuela to cause PDVSA to pay for the oil it purchased from Petroritupano or to distribute Petrobras's share of the dividends owed the Petroritupano investors for 2010 and 2011.

imposes a production schedule based on State goals rather than sound planning and field operations. At the same time, under PDVSA and its affiliates' mismanagement, the Oritupano Leona fields, wells, and operational facilities have rapidly and unnecessarily deteriorated. This deterioration is in part due to the lack of operating funds because of PDVSA Petróleo's failure to pay for oil and PDVSA/CVP's failure to insist on payment of those amounts in order to provide Petroritupano with needed operating funds.[63]

74. By December 2011, total Petroritupano production had decreased to an average of 19,200 BOEPD. This decrease is not due to normal production declines, but to PDVSA/CVP's failure to reasonably supply and maintain equipment, its lack of management expertise and skill, its failure to devote sufficient resources to operations, and its other failures as operator.

75. At the same time, Venezuela prevents VUS from effectively supervising its investment. Acting on behalf of the State, and in violation of the Venezuelan Commercial Code, PDVSA/CVP refused or delayed giving VUS access to the company's books and records, including minutes of Shareholder and Board of Directors meetings. VUS obtained copies of some of those minutes from PDVSA in March 2012, and later obtained others from the other foreign investor, Petrobras Argentina. While PDVSA/CVP has given VUS copies of some financial statements, VUS has no way of confirming the accuracy of those reports or the other information PDVSA/CVP provides to the Petroritupano shareholders and outside board members.

[63] In one small but telling example, when it was the operator, Petrobras had more than 100 vehicles in the field supporting operations. By 2010, PDVSA was cannibalizing vehicles in the field for parts to keep other vehicles working. Making matters worse, PDVSA/CVP has appointed six different general managers of Petroritupano since its formation in 2006, the longest of their tenures being just over a year.

V. VENEZUELA'S BREACHES OF ITS OBLIGATIONS UNDER THE BIT

A. Venezuela's Obligations to VUS as a Barbados Investor in Venezuela

76. The Government of Barbados and the Government of the Republic of Venezuela signed the Barbados/Venezuela BIT in Bridgetown, Barbados on July 14, 1995, and it entered into force on October 31, 1995. The BIT recognizes that "agreement upon the treatment to be accorded to such investment will stimulate the flow of capital and technology and the economic development of the Contracting Parties, and that fair and equitable treatment is desirable."[64]

77. As set out herein, Venezuela failed and continues to fail to comply with its obligations to VUS, as a company of Barbados, with respect to the fair and equitable treatment of, and non-discrimination against, VUS and VUS's investment, and in its failure to observe the obligations which it, through its wholly State-owned and controlled enterprises acting as organs of the State in the exercise of governmental authority, entered into with respect to VUS's investment. Venezuela further breached the BIT by effectively and wrongfully expropriating VUS's investment through its discriminatory actions without providing prompt, adequate, and effective compensation.

78. The actions of PDVSA, CVP, PDVSA Petróleo, and Petroritupano with respect to VUS and its investment are fully attributable to Venezuela. PDVSA and its affiliates are clearly State organs. They further exercise governmental authority in acting with respect to VUS and its investment. Even if they could in any instance not be considered as State organs or to act in the exercise of governmental authority, PDVSA and its affiliates act under the instructions, direction, or control of the State. Examining their structure and their function confirms that their conduct, acts, and omissions are attributable to Venezuela.

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[64] Ex. C-1, Barbados/Venezuela BIT, Preamble.

B. Breach of Article 2: Fair and Equitable Treatment, Non-Discrimination, Umbrella Clause

79. Article 2 of the BIT provides that each Contracting Party "shall encourage and create favourable conditions for national or companies of the Other Contracting Party to invest capital in its territory . . . ." [65] It expressly requires that the Contracting Parties must, among other things, protect and provide fair and equitable treatment of such investments:

> Investments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment in accordance with the rules and principles of international law and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to the treatment of investments of nationals or companies of the other Contracting Party.[66]

Venezuela grievously failed in its obligations to VUS to provide protection and security to the investment, to accord fair and equitable treatment to the investment, and to treat the investment without discrimination, and it continues today to treat its BIT obligations with calculated and callous disregard.

80. Under the applicable standards of international law, Venezuela's obligation to accord fair and equitable treatment to VUS's investment requires that it treat the investment in accordance with the investor's legitimate expectations and protect the investor from State conduct harmful to the investor. These requirements apply both to direct acts and omissions of the State and to acts and omissions of its agencies or enterprises that may be attributed to it. The obligation of such fair, just, and unbiased treatment requires physical protection of the investment and maintenance of the stability of a secure investment environment.

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[65] *Id.* art. 2(1).

[66] *Id.* art. 2.

81. VUS and its predecessor-in-interest have invested hundreds of millions of dollars in the development and production of crude oil from the Oritupano Leona area of Venezuela, from which Venezuela benefitted greatly, both technically and financially, VUS lost a large portion of the value of that investment with the forced migration to mixed company status. While VUS does not claim for that loss, since 2008 Venezuela has wrongfully deprived VUS of the value and returns of that investment, and treated VUS and its investment unfairly and inequitably, in breach of its obligations under Article 2 of the BIT.

82. Venezuela also impaired VUS's investment by imposing arbitrary and discriminatory measures affecting VUS's management, maintenance, use, and enjoyment of Petroritupano and its investment. Venezuela required that its State organ PDVSA and its affiliate CVP control Petroritupano, and that Petroritupano sell all oil produced to its State organ PDVSA Petróleo. Venezuela systematically abused and manipulated those requirements to deprive VUS of the rightful returns on its investment. It further discriminated against VUS by paying Petrobras Argentina its full share of dividends for 2008 and 2009 while failing and refusing to pay any part of the dividends owing to VUS. In so doing, Venezuela breached its obligations to VUS to treat its investment fairly and equitably and without discrimination.

83. Under the "umbrella clause" in Article 2 of the BIT, Venezuela must observe any obligation it entered into with regard to the treatment of Barbadian investors. Venezuela must ensure that it and its State organs acting on behalf of the State or exercising governmental authority, and those enterprises it directs or controls, meet their obligations with respect to the Conversion Contract, Petroritupano's Articles of Incorporation, and the Hydrocarbons Purchase and Sale Contract. In failing to do so, it has breached the requirements of the BIT.

84. Acting on behalf of and as part of the GOV, PDVSA and its affiliates refused to pay to VUS the declared Petroritupano dividends for 2008 and 2009 as provided for in the Conversion Contract and Petroritupano's Articles of Incorporation. As described above, PDVSA Petróleo failed to pay sums due and owing for oil under the Hydrocarbons Purchase and Sale Contract, depriving Petroritupano of its sole source of income, and PDVSA, CVP, and Petroritupano acquiesced in that failure. These State enterprises also engaged in a scheme of undisclosed "loans" and fees designed to deprive VUS of the value and returns from its investment. Acting on behalf of the GOV and with governmental authority, PDVSA and its affiliates improperly manipulated and misrepresented Petroritupano's finances, and otherwise breached their obligations to VUS. They further failed to meet obligations to the other Petroritupano shareholders in managing Petroritupano's finances and its operations on a day-to-day basis, thus failing to meet their obligations under the Contract of Conversion and the Petroritupano Articles of Incorporation. By failing to ensure that the obligations PDVSA and its affiliates entered into with respect to VUS are observed, Venezuela failed in its BIT obligations under the umbrella clause.

C. Breach of Article 3: National Treatment, Most Favored Nation Treatment

85. Article 3 of the BIT requires that Venezuela treat VUS's investment no less favorably than it treats the investments of its own nationals or companies or those of any other State:

> 1. Neither Contracting Party shall in its territory subject investments or returns of nationals or companies of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own nationals or companies or to investments or returns of nationals or companies of any third State.
>
> 2. Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment

> less favourable than that which it accords to its own nationals or companies or to nationals or companies of any third State.
>
> 3. The treatment provisions provided for in paragraphs (1) and (2) above shall apply to the provisions of Articles 1 to 11 of this Agreement.[67]

Venezuela breached these obligations to VUS.

86. Venezuela, acting through PDVSA and its affiliates, failed and refused to pay the declared Petroritupano dividends owing to VUS for 2008 and 2009 and engaged in a scheme to make it appear that Petroritupano suffered a loss and no dividends were due for subsequent years. Venezuela has retained those funds to benefit itself.

87. When it suited its political purposes, however, Venezuela favored the other foreign investor in Petroritupano by paying Petrobras Argentina its share of the declared dividends for 2008 and 2009 while refusing to pay VUS its share of those dividends. Venezuela conspicuously treated VUS, as regards its investment and the returns of its investment, and as regards the management, maintenance, use, enjoyment, and disposal of its investments, in a manner less favorable than that which Venezuela accords to the companies of a third State (Petrobras Argentina, the affiliate of Brazil's state oil company).

D. Breach of Article 5: Expropriation

88. Article 5 of the BIT prohibits the discriminatory and uncompensated expropriation of a Barbadian investor's investment in Venezuela:

> 1. Investments of nationals or companies of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the internal needs of that Party on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investments expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the

[67] Ex. C-1, Barbados/Venezuela BIT art. 3.

> earlier, shall include interest at a normal commercial rate until the date of payment, shall be made without delay, be effectively realizable and be freely transferable. The national or company affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.
>
> 2. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which nationals or companies of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such nationals or companies of the other Contracting Party who are owners of those shares.[68]

As described herein, Venezuela subjected VUS's investment to measures having the effect equivalent to nationalization or expropriation, and it did so for other than a legitimate public purpose, on a discriminatory basis, and without prompt, adequate, and effective compensation.

89. Since the forced migration to the mixed company form, and the refusal to allow Anadarko to sell VUS to a qualified buyer, VUS realizes the value of its investment entirely through dividends attributable to Petroritupano's income from sales of oil to PDVSA Petróleo. Venezuela effectively destroyed the value of that investment to VUS by failing to pay declared dividends due and owing for 2008 and 2009, by engaging in the scheme to make it appear Petroritupano suffered a loss and no dividends were due for 2010 and 2011, by refusing to provide VUS with information and documents necessary to allow it to evaluate and manage its investment, and by mismanaging the Oritupano Leona fields.

90. This expropriation did not serve a legitimate public purpose, but instead served political purposes by discriminating against VUS as the foreign investor, without regard for that investor's rights. Even if the expropriation could be found to be for a legitimate public purpose

[68] Ex. C-1, Barbados/Venezuela BIT art. 5.

and non-discriminatory, Venezuela breached its obligations under Article 5 of the BIT by failing to promptly, adequately, and effectively compensate VUS for the lost value of its investment suffered due to the expropriatory measures.

91. VUS reserves the right to advance further claims and arguments, or to amend the claims set out in this notice. VUS further reserves the right to adduce additional evidence, both factual and legal, including expert evidence, as necessary to supplement and establish the basis for its claims and to respond to any claims and assertions Venezuela may advance in this proceeding.

VI. RELIEF REQUESTED

92. VUS is entitled to compensation and other relief for the harm that it has suffered and will suffer due to Venezuela's acts in breach of its BIT obligations. The amount of damages will be determined based upon the evidence submitted in the arbitration proceeding. However, the actual damages suffered by VUS to date as a result of Venezuela's breaches of its obligations under Articles 2 and 3 of the BIT equal to at least US$ 58,870,898.14 in declared but unpaid dividends, plus additional damages in an amount to be determined. These damages are continuing and increasing as Venezuela continues to wrongfully deny VUS the returns from its investment.

93. VUS requests an award finding, declaring, and awarding it the following relief:

a. A declaration that Venezuela has violated the BIT in connection with its treatment of VUS and VUS's investment;

b. An award of damages in compensation for the full amount of damages suffered by VUS due to Venezuela's breaches of its BIT obligations, in an amount to be determined based upon the evidence;

c. An award of all costs and fees incurred in connection with the prosecution of this arbitration and the defense against any claims that may be asserted by Venezuela;

d. An award of interest on any compensatory amounts until the date of full satisfaction of the award, at a rate to be determined by the Tribunal in accordance with the BIT; and

e. Such other and further relief to which VUS may be justly entitled.

94. VUS reserves the right to seek additional remedies and to amend its statement of the claims asserted and the relief requested as may be appropriate.

VII. PROCEDURAL MATTERS

A. Place and Language of Arbitration

95. The BIT does not specify the language or place of the arbitration of a dispute arising under it.

96. Claimant believes the arbitration should be conducted in the English language.

97. Claimant proposes Bridgetown, Barbados, as an appropriate neutral seat for the arbitration. Barbados is party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York 1958).

B. Number and Appointment of Arbitrators

98. The arbitration agreement in Article 8 of the BIT does not specify the number of arbitrators to hear and decide the dispute or the method of their appointment.

99. Pursuant to Article 5 of the 2010 UNCITRAL Rules, unless the parties agree to a sole arbitrator, the tribunal shall consist of three arbitrators appointed in accordance with Article 7 of the Rules. Pursuant to Article 7 of the 2010 UNCITRAL Rules, Claimant hereby appoints Yves Fortier as a member of the Arbitral Tribunal. Mr. Fortier's contact information is as follows:

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Mr. Fortier is qualified by education, training, and experience to be an arbitrator in a matter of this nature and to Claimant's knowledge, understanding, and belief, he does not have any conflicts which would prevent him from serving as an arbitrator in this case.

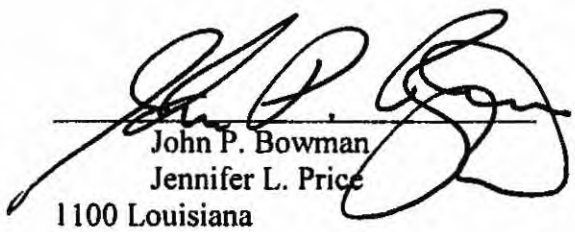
VIII. CONCLUSION

For the reasons stated above, Claimant Venezuela US gives notice of and initiates arbitration under the UNCITRAL Arbitration Rules in accordance with the provisions of Article 8(2) of the BIT. Claimant requests that, after the submission of argument and evidence, and the conduct of the evidentiary hearing, the Arbitral Tribunal issue a Final Award accepting and adopting Claimant's claims and position, and granting Claimant the relief requested. Claimant requests such other and further relief to which it may be justly entitled.

Dated: March 22, 2013

Respectfully submitted,

KING & SPALDING LLP



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