



National Assembly Releases Anti-Blockade Law

By Tinoco Travieso Planchart & Nuñez

The Anti-Blockade Constitutional Law for National Development and Guarantee of Human Rights, issued by the National Constituent Assembly, was published on Oct. 12, 2020, in the *Official Gazette* of the Bolivarian Republic of Venezuela No. 6,583. The purpose of the law is to establish a special and temporary normative framework that provides the Public Authority with the tools to address the so-called Unilateral Coercive Measures.¹ According to the constitutional law, the measures affect human rights, imply attacks against International Law and constitute crimes against humanity. Likewise, this law qualifies these measures as illegal and unlawful, and considers them to be a threat to national security.

The main purpose of the law is to guarantee that Venezuelan citizens fully enjoy their human rights, and to favor the development of the national economy, ensuring the self-determination and sovereignty of all Venezuelans. To fulfill its objectives, this constitutional law entitles the National Executive Branch to dictate measures for macroeconomic, commercial and investment stability. These measures apply to the national economy and its functioning at an international level of Venezuelan relationships with foreign investors that may be affected by Unilateral Coercive Measures.

All measures carried out by the Cabinet of Ministers of Venezuela require prior approval of the Venezuelan Ministry of Economy and Finance, and all legal business requires prior approval of the Attorney General's Office. Additionally, all enforcement measures of the constitutional law are also subject to the subsequent control of the Comptroller General of the Republic. The Council of State acts as a supervisory and monitoring body for the enforcement of this law and its effectiveness. The International Center for Productive Investment was also created, which includes the observatory on Unilateral Coercive Measures, dedicated to the study, follow up and evaluation of such measures, as well as the dissemination of their effects and the evaluation of productive projects that result from the enforcement of the constitutional law.

This law empowers the Executive Branch to disregard certain legal norms in specific cases when necessary to counteract Unilateral Coercive Measures, including the possibility of disregarding authorizations established in other laws for legal measures or business carried out by the Cabinet of Ministers of Venezuela. The faculty of the Cabinet of Ministers to terminate the legal order is considered a violation of constitutional principles such as legal certainty and the rule of law, to which the actions of the public administration must be subject.

Another characteristic of the constitutional law is that the measures that imply the cessation of legal norms are declared secret and reserved. In addition, in order to avoid compromising the effectiveness of the economic measures adopted by the Cabinet of Ministers, access to information established in administrative files and records may be limited or declared confidential. These powers are considered excessive limitations to the constitutional right to information, legal security and freedom of expression, in addition to the violation of the transparency principle that should govern the actions of the public administration.

As for the economic measures that can be enacted by the Cabinet of Ministers, the following stand out:



1. to create any kind of financial mechanism, for the purpose of protecting transactions involving financial assets of the Venezuelan Republic and its entities, including the use of cryptocurrencies
2. to execute legal acts or business for the protection of assets, in order to counteract threats of immobilization, dispossession or loss thereof
3. reorganizing decentralized entities for business purposes
4. modifying the mechanisms for the incorporation, ownership, management, administration and operation of joint ventures (especially aimed at the privatization of the oil industry, with the express exception of the state-owned company *Petróleos de Venezuela* or PDVSA), and
5. applying exceptional contracting mechanisms

All these measures imply the cessation of fundamental legal instruments that regulate the financial, organizational and contracting mechanisms of the public authority.

The duration of this law is established as of its publication in the *Official Gazette* of the Bolivarian Republic of Venezuela until the termination of the Unilateral Coercive Measures. The economic measures adopted by the Cabinet of Ministers will remain in force even when the constitutional law expires.

This constitutional law has caused great concern in the Venezuelan legal arena, since the granting of full powers to the Cabinet of Ministers and the secrecy stated in its actions, as well as fundamental constitutional norms and principles linked to the exercise of public service, citizens' access to information and their legal security, are ignored and dismissed. Furthermore, this instrument was issued by the National Constituent Assembly, which is not the legislative body established in the Constitution and there is no such "constitutional" law set forth in the Constitution of the Bolivarian Republic of Venezuela.

Learn more about our [Venezuela Focus Team](#).

¹ This is how the so-called Constitutional Law describes the sanctions imposed by the government of the United States of America and by other countries, which impact individuals and entities of the Venezuelan government. Additionally, the Constitutional Law includes the concept of "Other Restrictive Measures," which are defined as any action or omission, related or not to a Unilateral Coercive Measure, carried out by any international organization, public or private entity of any country that dictates the measure or of another country that executes it, extends its effects or takes advantage of it, in order to breach an action or omission of the laws, obligations or other measures that correspond to such law. Faced with this type of measure, the enforcement of this constitutional law is also further explained in the comments.

Information contained in this newsletter is for the general education and knowledge of our readers. It is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem, and it should not be substituted for legal advice, which relies on a specific factual analysis. Moreover, the laws of each jurisdiction are different and are constantly changing. This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship. If you have specific questions regarding a particular fact situation, we urge you to consult the authors of this publication, your Holland & Knight representative or other competent legal counsel.
