How to do business in Venezuela

What companies should consider when doing business
Venezuela is a sizeable market for UK products in the Latin American region. UK products and services enjoy a solid reputation for high quality and innovation.

Despite its apparent attractiveness, the Venezuelan market can be challenging. Bureaucracy, price and exchange controls and a lack of transparency are often cited as obstacles by the business community.

The UK and Venezuela are signatories of a bilateral Agreement for the Promotion and Protection of Investments.

UK companies present in Venezuela include Shell, British American Tobacco, GlaxoSmithKline, AstraZeneca, Aggreko, Diageo, BT, Norton Rose and Unilever. Venezuela is the largest market by value for Scotch whisky in Latin America and one of the most important whisky markets in the world.

Venezuela is organised into 23 states, a Metropolitan District (Capital City), and federal dependences (which include some islands in the Caribbean Sea). Around 80% of the population live in urban areas in the northern part of the country.

The capital city is Caracas, which is located in the central-north part of the country with a population of around 5 million. It is the largest city in Venezuela and is where the political, financial and commercial power of the country is located.

Other major commercial and economic hubs include Valencia and Maracaibo. Maracaibo is the capital of Zulia State (Western Venezuela) and is the second largest city in Venezuela with a population of 2 million. Zulia State's economy is heavily dependent on oil sector-related activity. Valencia is the capital of Carabobo State. It is
Venezuela’s third largest city and one of its major industrial and manufacturing centres, with a population of over 1.5 million.

Other major cities in Venezuela are Maracay (central Venezuela – industrial manufacturing activities, paper, textiles, chemicals, food), Barquisimeto (west-central Venezuela – food industry, plastics, textiles), Puerto La Cruz (port, tourism, oil and gas, refinery), Maturin (oil-related activity) and Puerto Ordaz (heavy industries). Venezuela’s main ports are Puerto Cabello (Carabobo State), La Guaira; located in Vargas State (central Venezuela), Maracaibo (Zulia State) and Guanta (Anzoátegui State).

Market entry and start-up considerations

There are several ways to approach the Venezuelan market depending on variables such as your export plans and strategies, nature of business, etc. The most common are:

a) Appointment of an agent/representative

b) Establishment of a branch office

c) Forming a joint venture with a local company

d) Importing distributor/retailer

e) Direct sales to customers (end users)

Irrespective of the way you choose to approach the market, it is worth seeking legal advice to ensure that any business plans or agreements you may develop are consistent with the local legal framework. It’s also important to understand the local business culture and protocol. An initial visit to the market is recommended since Venezuelans pay a great deal of importance to face-to-face meetings and personal interaction.

Although English is sometimes spoken by the business community, you should not rely on using only English. In the case of dealing with government officials, English is less-widely spoken. You should therefore try to ensure that all brochures, catalogues and marketing material are translated into Spanish.

Marketing and branding

Advertising and marketing are important in the context of the Venezuelan market. Venezuelans are very aware of branding. If your product is aimed at the retail market, you should make provision for effective advertising and marketing campaigns.
Quality is another important aspect to take into account when considering the Venezuelan market. In the higher market segments, Venezuelan customers have a taste for high-end products. UK-made products in general enjoy a good reputation for quality and reliability.

The Venezuelan market offers different ways of marketing a product commercially – TV commercials, newspapers and magazine ads and inserts are popular ways of advertising. Street and motorway banners are used extensively, and use of the internet and social media is also popular.

Customs and regulations

Venezuela is a member of the World Trade Organisation and joined MERCOSUR in 2013. Since 1990, the country has been applying the international Harmonized Tariff Code on Nomenclature of Merchandise which was incorporated into the customs tariff list. The Venezuelan Tariff contains all specific legal data applied to every item imported into the country, including non-tariff barriers, as well as some regulations used by neighboring Andean countries.

The Venezuelan Ministry of Finance is responsible for all customs-related activity through a dedicated agency called SENIAT (Servicio Nacional Integrado de Administración Aduanera y Tributaria/ National Integrated Service for Customs and Tax Administration). SENIAT’s main activity is controlling all tax-related matters including customs, and they have offices located in international ports and airports across the country: www.seniat.gob.ve

According to Venezuelan regulations, customs tariffs are usually based on an ad-valorem basis. They can vary depending on the case but in general terms they range from 5% (minimum) to an exceptional 35% (vehicles). Some products are not subject to any duties (duty free). Duties are calculated on CIF values.

The “Arancel de Aduanas” (Venezuelan Customs Tariffs Guide) contains detailed and relevant information on each product for those local buyers interested in importing them from overseas markets.

Occasionally the government regulates import levels by means of adjusting (raising or lowering) customs tariffs when considered necessary. Raising or lowering customs tariffs, often through a decree, has at times been used to either stimulate imports by certain trade or industry sectors or to curb what the government feels are “unnecessary luxury imports”.

It’s a very common practice among importers to use a private customs agent. Customs agencies are legally-registered private offices whose main activity is dealing with customs-related requirements on behalf of their customers (importers). They pay all
duties and taxes related to their customer’s imports and provide all logistical support including transportation of imported merchandise to their customer’s premises.

Legislation and local regulations

Unlike the UK legal system that relies on precedents, the Venezuelan legal system is based on written codes (civil law) as in European countries such as France and Spain. Venezuela’s body of laws consists of its national constitution, codes, federal and state laws, presidential decrees, and diverse regulations, including those from municipal and state governments.

The regulatory environment of Venezuela is one of open competition. The Constitution grants the national government the right to own certain industries which are considered “strategic” – the most important being those related to the oil & gas industry (the country’s main source of income) and the generation and distribution of electricity. Other sectors considered strategic for the country’s development are telecommunications, food production and distribution, and heavy industries.

The Venezuelan legal framework can be described as extensive and sometimes complicated. It is advisable to seek legal assistance in order to properly analyse the legal aspects of doing business in Venezuela as well as the advantages and disadvantages of the different approaches available. A suitable law firm can provide guidance on aspects such as starting up business, different types of business partnerships, taxation, exchange controls, labour regulations, intellectual property, etc. The UKTI team in Caracas can provide a list of reputable local law firms upon request.

Exchange controls

In 2003, the Venezuelan Government imposed a foreign exchange control system including a related legal framework. The main purpose of establishing such control according official explanations was to prevent capital flight as well as preventing speculative operations involving foreign currency.
As part of the currency control regime, the government established additional controls to regulate the allocation of forex to private companies, including “Certificates of Non–Local or Insufficient Products or Services”. This is ostensibly a mechanism in which the government allocates dollars to importing companies in sectors where domestic production is non-existent or insufficient to meet national demand.

The Exchange Control Regulations currently in force, allow for three official exchange rates for the purchase of US $. The first exchange rate is fixed at Bolivares 6.30 per US $1. This rate is allocated for the importation of food, medicines and goods deemed essential by the authorities. This exchange rate is intended for Venezuelan importing companies through the National Center for Foreign Trade (Centro Nacional de Comercio Exterior, “CENCOEX” formerly CADIVI – Foreign Exchange Management Commission).

The second rate of exchange is around Bolivares 11.00 per US $1 and is allocated through the Complementary System for the Administration of Foreign Currency (Sistema Complementario de Administración de Divisas, “SICAD”). The government allocates forex at this rate to products considered important but not essential.

The third rate is allocated through a system of daily auctions known as SICAD 2 and the average exchange rate is around Bolivares 50.00 per US $1. This rate is intended for those importing categories that do not qualify for any of the other mechanisms.

Taxation

The Venezuelan Tax System is classified by National Taxes and Local Taxes. The Venezuelan tax legislation contains different laws related to each tax. The taxes are related to income, assets and certain specific transactions. The fundamental legal structure for taxes is defined within the Constitution of the Bolivarian Republic of Venezuela which establishes procedures, and the National Assembly enacts the tax laws.

In addition to specific tax laws, there are some basic laws that refer to general tax administration such as income tax law and the fiscal code. Most tax laws have a series of regulations that are issued by the tax authorities and provide for procedures and interpretations. Taxpayers – both businesses and individuals – are obligated to request a tax ID number called RIF when they register with SENIAT.

**Value Added Tax (VAT)** VAT is applied on the selling of goods, the rendering of services and importation of assets and services. The VAT rate is currently set at 12%. Areas subject to a special fiscal regime (tax free zones) are exempt from this fiscal obligation.

**Income tax law** The Venezuelan Income Tax Law states that incomes obtained in the country by contributors, residents or not in the country, are taxed as well as the income
obtained abroad for those considered as resident or other parties domiciled in Venezuela. Non-domiciled legal entities with a permanent establishment in Venezuela must pay taxes based on the profits from territorial or extraterritorial sources attributable to such permanent establishment.

Venezuela has entered into agreements to prevent double taxation with the following countries: Italy, France, Germany, Portugal, Czech Republic, Trinidad & Tobago, the Netherlands, Switzerland, UK, Belgium, Denmark and Barbados among others. When no individual treaties exist, Venezuelan income tax law applies.

**Other taxes** A range of other taxes apply to businesses, for example social security contributions, registration taxes, stamp duty and municipal taxes.

**Tax Unit (Unidad Tributaria)** Venezuelan Tax regulation establishes a tax unit (TU) which is commonly used as a reference value to express tax obligations.

**Responding to tenders**

The Venezuelan public sector is the largest procurer in Venezuela and is governed by the “Ley de Licitaciones” or Tender Law. Major procurement contracts in sectors like oil & gas, power and infrastructure are undertaken by government bodies through tender processes.

In general terms, tenders are managed in one of three ways:

- Open only to domestic companies
- Open to both domestic and foreign companies
- Open exclusively to foreign companies

In cases where public tenders are open to foreign bidders, it is sometimes stipulated that the foreign company must form a consortium or joint venture with a local firm.

**National Registry of Contractors: exemptions**

If tenders are open to foreign companies, then registration with the National Registry of Contractors (NRC) is only required once short-listed. Companies expecting to sell goods or services costing less than 500 Tax Units (TUs) are exempt from registration as well as those participating in construction projects valued at less than 1,500 TUs.

**Classification of tenders**
Purchases of up to 500 TUs are not subject to tender. All others fall under one of the following three classifications:

- General tender
- Selective tender
- Direct purchase

1) General Tenders are for:

- purchase of goods or the contracting of services valued at over 11,000 TUs
- for construction projects of over 25,000 TUs

2) Selective Tenders are used for:

- services or goods valued between 1,100 TUs and 11,000 TUs
- construction projects valued between 11,500 TUs and 25,000 TUs
- when there are less than ten qualified suppliers listed in the National Register of Contractors
- if the goods are only available outside the country
- goods and services related to state security

For all selective tenders, at least five suppliers must be invited to bid with a minimum of three offers actually being submitted, or the process will be declared null and void.

3) Direct Purchase is used:

- if needed for the completion of a project already in process
- for purchasing artistic or scientific works
- when there is only one supplier
- in case of emergencies
- when it has been determined that no other methods of purchase are available
- if in the interest of economic development
- for the purchase of goods or the contracting of services valued up to 1,100 TUs
- for construction projects up to 11,500 TUs

How to bid

Bid proposals must usually be separated into two parts: The first part consisting of legal documentation regarding the supplier, description of experience, list of previous clients etc. The second part: providing information on the actual technical offer and price.

Bids are usually considered by a committee established by the buyer and in the presence of a representative of the National Comptroller. When reviewing the technical part, outside opinions may be required, such as from the College of Engineers, The National Council of Science and Technology, or a Congressional Committee established for this purpose. The National Comptroller has the final word in each and every case and may stop a bidding process at any time if he considers the procedures erroneous.

The publication of a tender normally contains a time schedule for pre-selection, submission of the final offer, and the date of the final selection. When several organisations are involved in the final selection, the deadline frequently slips and bidders are asked to provide a date up to which they will hold their prices. If that date passes, price increases may be accepted.

Recruiting and retaining staff

Venezuela has a skilled workforce in many sectors. There are experienced and skilled professionals in technical areas (e.g. oil & gas), and English is generally spoken by corporate directors in the private sector, but generally less so by members of the public sector. Recruitment agencies or “headhunters” services are popular.

Labour law is oriented to protect workers’ rights. Companies must comply with a number of regulations under the Organic Labour Law which contains the rights, benefits and obligations of employers and employees as well.

Labour regulations are mandatory and apply to all workers according to the law and regardless of their nationality.

Venezuela’s new Labour Law for Workers (Lottt) came into effect in May 2013, reducing the working week from 44 hours to 40 and requiring that employers provide two consecutive days off a week. The Law also prohibits unfair dismissal, outsourcing, increases maternity leave and guarantees the right to work for both women and people with a disability.
Labelling
All labels must be in Spanish, the official language of the country (although it does not prevent the inclusion of other languages). Measures must be expressed in metric units. Depending on the subject, labels must contain relevant information such as ingredients etc. Each official agency, (e.g. Ministry of Health, Ministry of Commerce) may issue their own set of requirements.

Standards and technical regulation

The Venezuelan public agency in charge of regulating standards and quality matters is called SENCAMER (National Autonomous Service for Standardisation, Quality, Metrology and Technical Regulations), a part of the Venezuelan Ministry for Commerce. Besides creating standards of quality, this body assists companies to obtain ISO accreditation, and provides technical assistance to local and foreign companies in need of specialised guidance on standards and quality issues.

FONDONORMA (Fund for the Normalisation and Certification of Quality) is responsible for issuing establishing standards, and is a member of the International Standard Organization, entitling the body to award ISO certificates to local companies.

In practice, both agencies serve the same purpose and their activities represent no conflict with each other.

Intellectual Property Rights

Despite the fact that Venezuela has a number of domestic regulations on intellectual property and has subscribed to a number of international treaties and agreements, the protection of intellectual property in Venezuela is poor. Venezuelan law provides for legal protection for certain intangible assets or intellectual property through legal instruments; e.g. patents, trademarks and copyrights.

Source - UKTI
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Case Study

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