Venezuela's Oil Reopening Leaves Risk Allocation Uncertain

By **José Alberro** (May 26, 2026, 10:44 AM EDT)

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Venezuela's reopening of its oil sector has encountered its first hurdle. In January, the Venezuelan government enacted a reform of its hydrocarbons law that was intended to attract private capital back into the country's energy sector.

In April, the International Monetary Fund and the World Bank Group resumed engagement with Caracas, Venezuela's capital city, after years of isolation, reinforcing the perception that Venezuela was reentering the global financial system.[1]

Yet investors still lack the contractual architecture needed to evaluate projects, price risks and commit capital. Moreover, the operational framework required to implement the reform remains incomplete.

The missing pieces are not secondary details. Production-sharing structures remain unfinished. Fiscal terms remain unsettled. Contract models capable of supporting financing decisions are still under discussion. That gap between legislative promise and contractual implementation is where the next generation of Venezuela-related investment disputes will form.

The first wave of Venezuelan arbitrations arose from expropriations, forced migrations to mixed companies, nationalizations and contract cancellations under the Chávez-Maduro model.

The next wave will look different. The disputes are likely to center on stabilization mechanisms, fiscal recalibration, regulatory adaptation and the alleged destruction of economic equilibrium.

That phrase appears throughout Venezuela's new hydrocarbons framework. Article 26 of the amended law requires contracts to preserve their "economic-financial equilibrium" throughout their duration, and authorizes the executive to modify royalties, taxes, and

contractual terms where legal or fiscal changes substantially affect project economics.

The language sounds reassuring. It is dangerous.

Investment arbitration does not guarantee profitability. It does not preserve expected returns or shield investors from adverse market conditions. It protects something narrower and more difficult to define: the original allocation of risk embedded in the investment relationship.

That distinction is not semantic. It is the difference between a state promising to preserve the structure of the bargain, and a state promising to rescue projects whenever economics deteriorate. Those are not the same thing.

In commercial practice, the term "economic equilibrium" may carry the intuitive suggestion that projects should remain economically viable despite adverse developments. But investment arbitration does not treat equilibrium as a freestanding obligation to preserve investor returns at predetermined levels.

Tribunals instead ask a narrower question: Did the state alter the distribution of risks that induced the investment in the first place?

That difference becomes decisive when projects deteriorate. Oil prices fall. Operating costs rise. Infrastructure fails. Sanctions reappear. Fiscal assumptions change. Financing dries up. Projects become uneconomic for reasons that may not have to do with treaty breach.

Investors may still invoke economic equilibrium, but deteriorating economics alone do not establish compensable harm. Arbitration does not eliminate commercial exposure. The question is whether the state altered the bargain after the capital became irreversible.

Confuse profitability with risk allocation and everything that follows begins to distort: how projects are priced, how claims are pleaded and how tribunals evaluate damages.

What the Case Law Actually Protects

Investment tribunals have resisted turning treaty protection into insurance against commercial disappointment. International Centre for Settlement of Investment Disputes tribunals have stated that investment treaties are "not an insurance against

business risk."[2]

A project that fails to produce anticipated returns does not become, for that reason, a treaty violation. Otherwise, every failed investment would migrate toward arbitration when markets deteriorate. That is not how the system was designed to operate.

At the time of investment, investors accept a bundle of risks: commodity prices, construction delays, financing pressures, operational failures, counterparties, regulatory evolution and political uncertainty. Returns are priced against those risks. When those risks materialize, outcomes may worsen without creating state liability.

But some changes operate differently. Certain measures alter the framework within which the investment was made. They remove expected revenue streams, restructure fiscal assumptions, dismantle regulatory arrangements or shift the economic basis upon which capital was committed. At that point, the issue is no longer disappointing performance.

The issue becomes whether the state changed the investment's risk structure after the investment decision had already been locked in. This is the boundary that Venezuela's reform will test.

Where the Line Is Drawn

Venezuela's new framework introduces flexibility into royalties, taxation and contractual arrangements. That flexibility is intended to attract investment into a volatile sector, while preserving state discretion during future downturns.

Economically and politically, that objective is understandable. But the broader the invocation of economic equilibrium, the more unstable the concept becomes unless the underlying allocation of risks is specified with precision.

Read expansively, the language creates expectations that tribunals are unlikely to satisfy. Tribunals have not treated equilibrium as a guarantee of profitability, nor as a commitment to preserve investor returns regardless of changing market conditions.

If understood more narrowly, however — as a mechanism for addressing genuine reallocations of risk — the concept becomes both commercially meaningful and legally manageable. The distinction is not academic. It will determine how future claims are argued, defended and valued.

A stabilization mechanism is only as credible as the political system capable of sustaining it. Where the governing framework remains contested, the line between ordinary commercial risk and state-induced disruption becomes harder to identify.

That ambiguity will migrate directly into the damages phase of future disputes. And that is where economic equilibrium becomes dangerous. The phrase is not decorative. It is performing transactional work. It is being used to persuade investors to enter a sector where the state seeks flexibility over royalties, taxation, production-sharing, currency flows and export structures.

The risk is that the concept becomes a vessel into which both sides later pour incompatible expectations.

What the Large Cannot Move, the Small May Displace

The difficulty may not lie in the concept itself, but in the way it is left undefined. States and investors have invoked economic equilibrium as if the phrase carried a stable legal meaning. It does not.

Tribunals repeatedly resist transforming investment arbitration into insurance against commercial disappointment, yet contracts and legislation continue to invoke equilibrium without specifying what exactly must remain in balance, which risks remain with the investor, which remain with the state and what remedies follow if that balance is disturbed. That ambiguity is not harmless drafting. It transfers the real negotiation to the arbitral tribunal.

Once projects deteriorate, parties retroactively redefine equilibrium in different ways. Investors equate it with preserving returns. States reduce it to regulatory flexibility. Tribunals are then asked after the fact to reconstruct an economic bargain that was not fully specified at the outset.

The softer solution may therefore be the stronger one. What the large cannot move, the small may displace. The soft overcomes the hard.

Instead of relying on abstract invocations of economic-financial equilibrium, states and investors could define the concept directly in the contract itself: which variables trigger adjustment; which risks remain uncompensated; which changes constitute a reallocation

of risk; how losses are measured; whether remedies involve tariff adjustment, fiscal modification, extension of term, compensation or termination rights; and which market conditions remain entirely at the investor's expense.

This approach would not eliminate disputes, but it would narrow them. More importantly, it would prevent tribunals from becoming the institutions that define economic equilibrium retroactively under the pressure of failed projects and political crisis.

The irony is that the more aggressively equilibrium is proclaimed at the legislative level, the more dangerous the concept becomes — unless the underlying bargain is specified with precision. Otherwise, economic equilibrium risks becoming less a legal standard than a repository for disappointment after the collapse.

Why it Isn't Insurance Against Failure

Economic equilibrium remains a useful concept, but its limits are increasingly visible. It does not protect investors from adverse outcomes as such. It addresses a narrower question: whether the legal or regulatory framework changed in a way that reassigned risks that were not part of the original bargain.

That distinction matters now because Venezuela is trying to accomplish two things simultaneously: attract private capital while preserving broad sovereign flexibility over the sector's future evolution. Those objectives are not necessarily incompatible, but they require clarity about who bears which risks when conditions deteriorate.

Investors therefore should not treat Venezuela's equilibrium language as a substitute for contractual precision.

Venezuela's political environment remains unsettled. The political legitimacy of the transformation is uncertain, and thus the boundaries of its application remain indeterminate. That uncertainty matters economically, because investors price not only fiscal terms, but also institutional durability.

If sanctions return, fiscal terms shift, approvals stall, export channels narrow or operational restrictions emerge, the decisive question will not be whether the project became less profitable. The question will be whether the state altered the allocation of risks after the investment was made.

The next Venezuela arbitrations will not be decided by rhetoric about equilibrium. They will turn on something far more concrete: who agreed to bear which risks once the capital became irreversible.

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[1] On the January amendment, see "Venezuela's Hydrocarbons Law Reform: What Businesses Need to Know," Baker McKenzie (2 March 2026), https://www.bakermckenzie.com/en/insight/publications/2026/03/reform-organic-hydrocarbons-law-venezuela. On the IMF and World Bank actions, see Libby George, "IMF, World Bank say they are resuming dealings with Venezuela," Reuters (16 April 2026), https://www.reuters.com/world/americas/imf-resumes-dealings-with-venezuela-after-six-year-gap-2026-04-16/.

[2] MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile, ICSID Case No. ARB/01/7 at ITA Law, https://www.italaw.com/cases/717. Tidewater Inc.,Tidewater Investment SRL, Tidewater Caribe, C.A., et al.v. The Bolivarian Republic of Venezuela, ICSID Case No. ARB/10/5 at ITA Law, https://www.italaw.com/cases/1096.