

# CIRCULAR

## OUTLINE

- PdVSA has been made a target of U.S. sanctions and added to the OFAC SDN list.
- A number of General Licences have been issued with authorisations of varying duration to allow U.S. persons to wind down existing business with PdVSA or its subsidiaries.
- FAQs issued by OFAC suggest (but do not explicitly confirm) that non-U.S. persons may continue to do business with PdVSA and its subsidiaries without risk of sanctions provided that restrictions on U.S. persons are observed.
- Members are therefore recommended to exercise caution in dealings with PdVSA and subsidiaries, and to take legal advice if in any doubt as to whether any proposed transactions may incur a risk of U.S. sanctions.

## TO THE MEMBERS

### VENEZUELAN SANCTIONS – DESIGNATIONS AGAINST PDVSA

Executive Order 13857 dated 25th January 2019, published by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), amends several previous Executive Orders to include Petroleos de Venezuela, S.A. (PdVSA) within the meaning of "Government of Venezuela", thereby making PdVSA a sanctions target. PdVSA has also been added to the OFAC SDN list with effect from 28th January 2019.

Alongside the Executive Order, a number of general licenses have been issued, to authorise U.S. persons (both individuals and entities) to wind down or continue commercial activities relating to PdVSA and its subsidiaries, but requiring in some cases that payments can only be made to blocked accounts which PdVSA cannot access.

The following licenses, which it should be noted contain authorisations of varying lengths of validity, may be of particular relevance to Members who have business with PdVSA or its subsidiaries:

**General License 7** – authorises (a) up to 27 July 2019, transactions and activities involving PDV Holding Inc (PDVH), CITGO Holding Inc. and their subsidiaries; (b) up to 28 April 2019, PDVH, CITGO Holding Inc. and their subsidiaries to engage in transactions and activities ordinarily incident and necessary to the purchase and importation of petroleum and petroleum products from PdVSA.

**General License 8** – authorises up to 27 July 2019, all transactions and activities ordinarily incident and necessary to the operations in Venezuela involving PdVSA or its subsidiaries for: Chevron Corporation, Halliburton, Schlumberger Limited, Baker Hughes, and Weatherford International.

**General License 11** – authorises up to 29 March 2019 (a) U.S. person employees and contractors of non-U.S. entities located outside of the U.S. and Venezuela to engage in all transactions and activities that are ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements involving PdVSA and its subsidiaries, and (b) U.S. Financial institutions to reject funds transfers involving PdVSA and non-U.S. entities located outside of the U.S. or Venezuela. The GL expressly prohibits dealings with ALBA de Nicaragua (ALBANISA).

**General License 12** – authorises (a) up to 28 April 2019, all transactions and activities ordinarily incident and necessary to the purchase and import into the United States of petroleum and petroleum products from PdVSA or its subsidiaries, and (b) up to 28 February 2019, all transactions ordinarily incidental and necessary to the wind down of operations, contracts, or other agreements, including the importation into the United States of goods, services, or technology not authorised under (a) involving PdVSA or its subsidiaries.

**General License 13** – authorises up to 27 July 2019, all transactions where the only PdVSA entities involved are Nynas AB or any of its subsidiaries.

New FAQs providing guidance on the interpretation of the relevant Executive Orders and the General Licences have been published on the OFAC website with effect from 31 January 2019.

FAQ 657, set out below, addresses questions that may be of interest to Members who are non-U.S. persons involved in trade with PdVSA.

*657. I am a non-U.S. entity that purchases petroleum and petroleum products from Petróleos de Venezuela, S.A. (PdVSA) or an entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest. Am I now prohibited from purchasing petroleum and petroleum products from these companies?*

*Transactions to purchase petroleum and petroleum products from PdVSA or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest, and that involve U.S. persons or any other U.S. nexus (e.g., transactions involving the U.S. financial system or U.S. commodity brokers) must be wound down by April 28, 2019 pursuant to Venezuela-related General License 12. In addition, under General License 11, U.S. person employees and contractors of non-U.S. companies located in a country other than the United States or Venezuela are authorized to engage in certain maintenance or wind-down transactions with PdVSA, or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest, through 12:01 a.m. eastern daylight time, March 29, 2019. (See FAQ 654.) [01-31-2019]*

Members may note that the answer in FAQ 657 suggests, but does not explicitly say, that non-U.S. entities may continue to purchase petroleum and petroleum products from PdVSA and its subsidiaries, provided that restrictions on U.S. entities are observed.

FAQ 657 does not, however, address the effect of Section 1 (a) (iii) of EO 13850 which provides for the blocking of all property in the U.S. of “any person” (not limited to U.S. persons) who is determined – “to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of ... any person whose property and interests in property are blocked pursuant to this order.”

The Club’s legal counsel has therefore been asked whether a non-U.S. shipowner who provides ocean transportation for PdVSA would be at risk of being regarded as providing services in support of a blocked person.

The Club’s legal counsel considers it unlikely that the U.S. intends to target non-U.S. persons, bearing in mind the absence of any explicit prohibition on PdVSA shipments to third countries and an absence of wind-down licenses for such shipments. It is also considered significant that there are no specific secondary sanctions directed against insurance of targeted trades or activities.

Members are nevertheless reminded that cover remains subject to the Club’s Rule 5V which would exclude the right of recovery from the Club in circumstances where such recovery may expose the Club to a sanction or other adverse action by a competent authority or government.

Members who have trading relationships with PdVSA or its subsidiaries and who could potentially be affected by the sanctions are therefore recommended to exercise caution in their dealings with PdVSA or its subsidiaries and to take legal advice on proposed trades until the situation becomes clearer.

Yours faithfully

**THE MANAGERS**

**For more information**

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