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CLIENT ALERT:

U.S. SANCTIONS AGAINST VENEZUELAN DIGITAL CURRENCY IMPACT SHIPPING

April 10, 2018

Introduction

Executive Order 13808, issued on August 24, 2017, was designed to put pressure on the Venezuelan government by prohibiting U.S. persons, or anyone within the U.S., from extending new debt to the Venezuelan government with a maturity greater than 30 days, or to Petroleos de Venezuela, S.A. ("PDVSA") with a maturity greater than 90 days. The E.O. also prohibited U.S. persons or those in the U.S. from dealings in bonds or securities issued by the Government of Venezuela or from paying any dividend to the Government of Venezuela.

In part to counteract the effects of E.O. 13808, on January 9, 2018 President Maduro of Venezuela announced that Venezuela would issue its own crypto-currency, the Petro, which would be backed by the country's petroleum reserves. This move was designed to minimize the impact of the U.S. prohibition on the extension of new debt and to create a new means of payments for goods and services. In response, on March 19th President Trump issued Executive Order 13827, which prohibits U.S. persons and persons within the U.S. from providing financing for or engaging in any dealings in "any digital currency, digital coin or digital token" issued by Venezuela on or after January 9, 2018, which includes the Petro.

Impact on Foreign Shipping

Obviously, E.O. 13827 prohibits any U.S. persons, including U.S. shipowners and U.S. banks, from engaging in any transactions relating to the Petro. However, recent developments in Venezuela may expose foreign shipowners calling Venezuelan ports to the prohibitions contained in E.O. 13827.

On March 23rd the National Institute of Aquatic Spaces ("INEA"), which acts as the Venezuelan maritime authority, issued a Circular to all shipping agencies in Venezuela, advising that payment for all services rendered to foreign flag vessels must thereafter be paid in Petros. This means that foreign shipowners will have to pay for such services as pilotage and towage in Petros, although as of April 6th it appears that the mechanism for Petros payments had not yet been implemented and payments were still being made in U.S. dollars. Reportedly, there is a possibility that the requirement for Petros payments may be extended to other maritime services provided by government agencies in Venezuela.

The requirement that payment for shipping services provided by Venezuelan governmental agencies be made in Petros may expose foreign shipowners to the prohibitions of E.O. 13827. In addition to preventing U.S. persons from engaging in any transactions relating to Venezuelan digital currency, E. O. 13827, in Section 2, prohibits any transaction "… that evades or avoids, has the purpose of evading or avoiding, **causes a violation of**, or attempts to violate any of the prohibitions set forth in this order…." (emphasis added).

It is our understanding that foreign shipowners often remit funds on account to Venezuelan ship agents in order to pay port charges and vessel disbursements. Such remittances are often made in U.S. dollars and move through the U.S. banking system. Since it now appears that a portion of such advances paid by foreign shipowners may be used by local Venezuelan shipping agents to purchase Petros, in order to make the required payments in that digital currency, U.S. banks would be engaged in a transaction "related to" Petros.

Informal discussions with the U.S. Office of Foreign Asset Control ("OFAC") indicate that a bank which processes an advance payment to a Venezuelan port agent, a portion of which would used to purchase Petros, would be in violation of E. O. 13827. Furthermore, the foreign vessel owner who instructs the bank to make such a remittance, knowing that a portion of the remittance would be used in dealing in Petros, would also be in violation of E. O. 13827, because it would have caused a violation of the E. O. by a U.S. bank.

Summary

Foreign shipowners trading with Venezuela should exercise caution to be certain that any remittances made through the U.S. financial system in connection with their Venezuelan trade are not ultimately being used to purchase Petros. In the wake of E.O. 13827 and the INEA Circular, it is anticipated that U.S. banks will scrutinize all financial transactions relating to Venezuela with great care, particularly those involving shipping.

Disclaimer: This Client Alert provides only a general summary of the Executive Order 13827 and of the March 23, 2018 Circular issued by INEA and is not intended to constitute comprehensive legal advice. Specific legal advice should be taken with respect to each individual inquiry regarding the new Executive Order and the UN Resolutions. For additional clarification, please feel free to contact Bill Juska (juska@freehill.com), Gina Venezia (venezia@freehill.com) or Bill Pallas (pallas@freehill.com).

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