

# U.S. Sanctions Venezuelan Oil Industry

January 29, 2019

On January 28, 2019, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), in consultation with the U.S. Department of State, determined that persons operating in Venezuela's oil sector are subject to sanctions under Executive Order ("E.O.") 13850. As a result, OFAC concurrently designated Petróleos de Venezuela, S.A. ("PdVSA") as a specially designated national ("SDN") pursuant to E.O. 13850 for operating within this sector. Effective immediately, PdVSA is now included on OFAC's list of SDNs (the "SDN List") and all property and interests in property of PdVSA subject to U.S. jurisdiction are now blocked.

OFAC simultaneously amended previously-issued General License 3 by issuing General License 3A ("GL 3A") and issued eight (8) new general licenses related to the designation of PdVSA. Newly issued General Licenses 7, 8, 9, 10, 11, 12, 13, and 14—which are summarized further below—are intended to mitigate the impact of the designation of PdVSA outside of Venezuela by providing certain exemptions and time-limited authorizations for certain transactions and activities related to PdVSA and its subsidiaries.

## KEY TAKEAWAYS

At a high level, as a result of OFAC's designation of PdVSA and issuance of related general licenses:

- all assets of PdVSA and its direct and indirect subsidiaries owned 50% or more by PdVSA or other SDNs (in the aggregate) within U.S. jurisdictions are now blocked and all transactions within U.S. jurisdiction involving these persons and entities are prohibited, absent a license;
- PdVSA and its subsidiaries may still service debt issued prior to the imposition of U.S. sanctions on the Venezuelan government under E.O. 13808 (i.e., debt issued prior to August 25, 2017 as discussed in our previous alert memorandum),<sup>1</sup> and U.S. persons can continue to hold and provide services related to such debt, **but** transfers of such debt are now only permitted to non-U.S. persons (in other words, U.S. persons may only divest PdVSA debt, not acquire it);
- purchase and importation into the United States of petroleum and petroleum products from PdVSA is permitted until April 28, 2019, so long as all proceeds from such sales are paid into blocked, interest-bearing accounts in the United States rather than released to PdVSA;

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors

WASHINGTON

**Paul Marquardt**  
+1 202 974 1648  
[pmarquardt@cgsh.com](mailto:pmarquardt@cgsh.com)

**Nathanael Kurcab**  
+1 202 974 1652  
[nkurcab@cgsh.com](mailto:nkurcab@cgsh.com)

<sup>1</sup> See [U.S. Sanctions New Debt and Equity Issuances by Venezuelan Government](#) (Aug. 25, 2017), [clearygottlieb.com](http://clearygottlieb.com)



- certain U.S.-linked PdVSA subsidiaries—including PDV Holding, Inc. (“PDVH”), CITGO Holding, Inc. (“CITGO”), and their subsidiaries—are not subject to blocking sanctions until July 27, 2019, and thus their assets are not frozen and transactions with these entities within U.S. jurisdiction remain permitted; and
- U.S. financial institutions are permitted to reject rather than block (*i.e.*, return rather than seize) funds transfers involving PdVSA or its subsidiaries, so long as the funds transfers originated outside of the United States and both the originator and beneficiary are non-U.S. persons located outside of the United States or Venezuela, until March 29, 2019. Note that this does not authorize the processing of U.S. dollar transfers relating to PdVSA, which are now prohibited unless related to U.S.-licensed activities.

### **IMPACT OF PdVSA DESIGNATION**

PdVSA is now blocked as an SDN under E.O. 13850. As with all SDN designations, all of PdVSA’s assets within U.S jurisdiction are blocked and all transactions within U.S. jurisdiction involving PdVSA are prohibited, unless otherwise licensed or authorized (*see* summary of the new general licenses below). Under OFAC’s [50% Rule](#), these prohibitions also apply to all direct and indirect subsidiaries of PdVSA—including subsidiaries operating in the United States—owned 50% or more by PdVSA or other sanctioned entities in the aggregate. The property and interests in property of such entities are blocked even though the entities themselves are not named on the SDN List. Entities blocked under the 50% Rule are treated as blocked for further calculations, so that Entity X 10% owned by PdVSA and 40% owned by a 50% subsidiary of PdVSA is also blocked (as is any entity of which Entity X in turn owns 50%). As detailed further below, the imposition of blocking sanctions on PDVH, CITGO, and their subsidiaries has been temporarily suspended pursuant to newly issued General License 7 (“GL 7”) (although PdVSA’s shares in PDVH are PdVSA property and are now blocked).

OFAC takes a very broad view of the scope of prohibited conduct involving blocked entities. As a result, all transfers of property in which PdVSA and/or its subsidiaries blocked as a result of the operation of the 50% Rule have an interest, or of interests in or claims on PdVSA or other blocked entities, are prohibited absent a license. The terms “transfer” and “interest in property” have broad meaning in this context. Here, “transfer” includes setoffs, assignments, attachment, and any other creation, conveyance, or alteration of an interest. Similarly, “interests in property” broadly includes tangible and intangible property (such as legal rights) and direct and indirect interests of any kind (including contingent or beneficial interests falling short of legal title).

Additionally, under Section 1(a)(iii) of E.O. 13850, any person or entity found going forward “to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of” PdVSA or its subsidiaries blocked by the operation of the 50% Rule could itself be sanctioned under E.O. 13850 and subject to blocking sanctions. Similarly, under Section 1(a)(iv) of E.O. 13850, parties acting “for or on behalf of” PdVSA and its blocked subsidiaries could be subject to blocking sanctions. (Activities permitted by U.S. sanctions would not be sanctioned.) We note the imposition of such sanctions is a discretionary political determination and thus far from automatic.

The above restrictions apply to the property of PdVSA and related blocked entities held in the United States or in the custody or control of U.S. persons. They also apply to transactions within U.S jurisdiction, which includes transactions: (1) involving U.S. citizens (including dual citizens), legal entities, or lawful permanent residents (*i.e.*, “green card holders”) (together, “U.S. Persons”), (2) within or passing through the United States, or (3) directly or indirectly involving the procurement of goods or services in the United States. Notably, this covers

any U.S. dollar payments or securities transactions clearing through the U.S. financial system or a custodian that is a U.S. Person, which includes virtually all interbank transfers.

## NEW GENERAL LICENSES

As noted, OFAC both amended previously issued General License 3 and issued a number of new general licenses related to the designation of PdVSA. All general licenses detailed below are effective immediately.

### I. General License 3A

GL 3A replaces and amends previously issued General License 3 by terminating the general authorization to trade in certain bonds issued prior to the imposition of sanctions on the Government of Venezuela by PdVSA, Petrozuata Finance Inc. (“PFI”), or Nynas AB (“Nynas”) (and removing such bonds from the related annex). Additionally, GL 3A terminates the authorization to trade in pre-sanctions bonds of Nynas, PDVH, CTIGO, or their subsidiaries that had been previously available under General License 3. We note that General License 9 (“GL 9”) (discussed further below) permits U.S. Persons to continue to hold and receive payment on most of these securities (other than those issued by PFI) and to sell them to non-U.S. Persons.

### II. General License 7

GL 7 suspends the impact of blocking sanctions on PDVH, CITGO, and their subsidiaries—so long as no other PdVSA entities are involved in any related transactions or activities—until July 27, 2019. The same entities are also authorized to engage in all transactions and activities ordinarily incident and necessary to purchase and import petroleum and petroleum products from PdVSA and its directly or indirectly owned 50% subsidiaries until April 28, 2019. However, all payments to or for the benefit of PdVSA or its direct or indirect subsidiaries other than PDVH and CITGO (and their subsidiaries) authorized under this license must be made into a blocked, interest-bearing account in the United States.

### III. General License 8

General License 8 (“GL 8”) authorizes Chevron, Halliburton, Schlumberger, Baker Hughes, and Weatherford International to continue operations in Venezuela involving PdVSA or its subsidiaries until July 27, 2019 (subject to compliance with the other U.S. sanctions on Venezuela). However, GL 8 does not authorize any exportation or re-exportation of diluents (fluid diluting agents used to render heavy Venezuelan crude more marketable) to Venezuela.

### IV. General License 9

GL 9 authorizes all dealings in debt issued prior to the imposition of sanctions on the Government of Venezuela (i.e., prior to August 25, 2017) of PdVSA and its directly or indirectly owned 50% subsidiaries, including promissory notes, receivables, and most bonds previously covered by GL 3; however, any divestment or transfer of such debt must be to a non-U.S. person. (Pre-sanctions debt of PdVSA and its subsidiaries, other than bonds, was previously unrestricted.) GL 9 appears to permit continued payment of principal and interest on such PdVSA-related debt, even to U.S. Persons. Dealings in all PdVSA bonds previously listed in the annex to GL 3, as well as all pre-August 25, 2017 bonds issued by Nynas, PDVH, CITGO, and their subsidiaries, are authorized by GL 9. GL 9 also authorizes facilitating, settling, and clearing transactions to divest PdVSA debt to non-U.S. persons on behalf of U.S. Persons.

Notably, GL 9 does not cover bonds issued by PFI; those bonds are now blocked—after removal from coverage under GL 3A—and all transactions relating to them within U.S. jurisdiction are now prohibited.

We also note that previously issued [General License 2](#), which permits CITGO and its subsidiaries to issue new debt, has not been amended or limited by any of the newly issued general licenses. It appears that neither E.O. 13808 nor E.O. 13850 restricts or prohibits trading in such new debt (including within U.S. jurisdiction) unless and until CITGO becomes a blocked entity following the expiration of GL 7.

V. [General License 10](#)

General License 10 (“[GL 10](#)”) authorizes U.S. Persons in Venezuela to purchase refined petroleum products from PdVSA for personal, commercial, or humanitarian use from PdVSA or its subsidiaries. GL 10 does not authorize any commercial resale, transfer, exportation or re-exportation of purchased products.

VI. [General License 11](#)

General License 11 (“[GL 11](#)”) authorizes certain maintenance and wind-down provisions for non-U.S. entities dealings with PdVSA and its directly or indirectly owned 50% subsidiaries until March 29, 2019. This includes:

- authorization for U.S. Person employees and contractors of non-U.S. entities outside of the United States or Venezuela to engage in transactions and activities necessary to maintain or wind down operations or contracts involving PdVSA or its subsidiaries that were entered into prior to January 28, 2019; and
- authorization for U.S. financial institutions to reject (return to the parties) rather than block (seize as blocked property) funds transfers involving PdVSA or its subsidiaries, so long as the transfer comes from outside the United States and both the originator and beneficiary are non-U.S. persons located outside the United States or Venezuela.

Neither authorization applies to dealings involving ALBA de Nicaragua (“[ALBANISA](#)”).

We note the authorizing language in GL 11 resembles language in the general licenses authorizing dealings with certain Russian blocked entities (although, unlike those licenses, GL 11 does not permit U.S. Persons to continue operations), and OFAC’s guidance regarding terms such as “maintenance” is likely to be instructive.<sup>2</sup>

VII. [General License 12](#)

General License 12 (“[GL 12](#)”) authorizes continued import of petroleum and petroleum products from PdVSA and its direct or indirect 50% subsidiaries into the United States until April 28, 2019, provided that any such payment must be made into a blocked, interest-bearing account in the United States. GL 12 expressly does not authorize (1) exportation or re-exportation of diluents from the United States nor (2) dealings with ALBANISA or any entity in which ALBANISA owns, directly or indirectly, a 50 percent or greater interest.

VIII. [General License 13](#)

General License 13 (“[GL 13](#)”) authorizes dealings with Nynas and its subsidiaries until July 27, 2019, provided no other PdVSA entities are involved and any payments due to them that come within U.S. control are blocked.

IX. [General License 14](#)

General License 14 (“[GL 14](#)”) generally exempts all transactions for the official business of the United States.

---

<sup>2</sup> See [OFAC FAQ 625](#) (noting that “maintenance” includes “all transactions ordinarily incident to the continuity of operations” and transactions and activities ordinarily incident to performance on contracts predating sanctions so long as the “level of performance is consistent with the terms of the general license and past practices”).

**NEXT STEPS**

Given the fluid political situation involving Venezuela, it is entirely possible that additional U.S. sanctions on the Venezuelan Government or additional Venezuelan entities follow the designation of PdVSA and that the general licenses above could be modified, extended, supplemented, or revoked. We also note that OFAC has stated that it expects to shortly provide additional guidance in a series of updated and new FAQs related to the designation of PdVSA and the related general licenses.

...

CLEARY GOTTLIB