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# OFAC's Designation of PdVSA Escalates Venezuela Sanctions

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On January 28, 2019, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") added Petróleos de Venezuela, S.A. ("PdVSA"), Venezuela's state-owned oil and gas company, to its List of Specially Designated Nationals and Blocked Persons (the "SDN List"). OFAC's action represents a significant escalation of U.S. sanctions targeting Venezuela. Despite OFAC's effort to mitigate the collateral consequences of this action on U.S. business interests, Monday's designation of PdVSA will have immediate implications for investors and businesses who deal in the Venezuelan oil and gas industry, and may presage additional sanctions activity in the short term.

## U.S. Sanctions Targeting Venezuela under the Trump Administration: A Primer

On August 24, 2017, President Trump strengthened existing sanctions targeting Venezuela through the issuance of Executive Order 13808, which prohibits U.S. persons from engaging in most transactions and dealings involving new debt of the government of Venezuela, as well as certain bonds issued by the Venezuelan government. Executive Order 13808, however, treated PdVSA with greater leniency than the broader Venezuelan government. In particular, Executive Order 13808 (1) established a higher value threshold for prohibited dealings in new debt of PdVSA; and (2) was accompanied by a general license that authorized dealings with PdVSA's majority-owned subsidiary, CITGO Holding, Inc. ("CITGO"), parent company of U.S.-based Citgo Petroleum Corporation ("Citgo Petroleum").

During 2018, the Trump administration continued to strengthen sanctions targeting Venezuela through the issuance of new executive orders:

- Executive Order 13827, issued on March 19, 2018, which prohibits dealings in cryptocurrencies backed by the Government of Venezuela;
- Executive Order 13835, issued on May 21, 2018, which prohibits dealings in debt owed to the Government of Venezuela, such as accounts receivable; and
- Executive Order 13850, issued on November 1, 2018, which authorizes OFAC to designate to the SDN List, *inter alia*, individuals and entities who operate in Venezuela's gold sector or engage in "transactions involving deceptive practices or corruption and the Government of Venezuela."

Although initially primarily targeted at Venezuela's gold sector, Executive Order 13850 broadly authorizes OFAC to target parties operating "in any other sector of the Venezuelan economy" that the Department of the Treasury, in consultation with the Secretary of State, deems to be engaged in corrupt activities.

## The PdVSA Designation

On January 28, 2019, OFAC added PdVSA to the SDN List. As a result, U.S. persons are immediately prohibited from dealing with either PdVSA or entities majority-owned by PdVSA, subject to the limited exceptions detailed below.

In a press release, Treasury Secretary Steve Mnuchin stated that the United States was "holding accountable those responsible for Venezuela's tragic decline" and that the "designation of PdVSA will help prevent further diverting of

Venezuela's assets by [President Nicólas] Maduro and preserve these assets for the people of Venezuela."[1] According to the press release, the Department of the Treasury concluded "PdVSA has long been a vehicle for corruption," and explained that the PdVSA designation "follows a determination by Secretary Mnuchin pursuant to E.O. 13850 that persons operating in the oil sector of the Venezuelan economy may be subject to sanctions."[2]

In connection with the PdVSA designation, OFAC released an Executive Order signed by President Trump on January 25, 2019 and titled "Taking Additional Steps to Address the National Emergency with Respect to Venezuela." The new Executive Order amended the term "Government of Venezuela" in all prior executive orders to include PdVSA and other persons that have acted, or purported to act, on behalf of the Government of Venezuela, including members of the Maduro regime.

Consistent with recent practice, OFAC attempted to mitigate the immediate impact of the action on U.S. business interests through the issuance of eight new general licenses:[3]

- General License No. 7, Authorizing Certain Activities Involving PDV Holding, Inc. and CITGO Holding, Inc., authorizes dealings with PDV Holding, Inc. ("PDV") and CITGO, as well as their subsidiaries, so long as these companies are the only PdVSA-related entities involved in the transaction. (Both PDV and CITGO are majority-owned by PdVSA and are, therefore, considered blocked parties pursuant to OFAC's 50 percent rule.) Due to Citgo Petroleum's ownership by CITGO, General License No. 7 authorizes continued dealings with Citgo Petroleum within the United States. However, the license currently is set to expire on July 27, 2019.

- General License No. 8, Authorizing Transactions Involving Petróleos de Venezuela, S.A. (PdVSA) Prohibited by Executive Order 13850 for Certain Entities Operating in Venezuela, authorizes major U.S. oil and gas companies—including, *inter alia*, Halliburton, Schlumberger Limited, Baker Hughes, and Weatherford International—to continue to engage in transactions involving PdVSA and its majority-owned subsidiaries through July 27, 2019.

- General License 9, Authorizing Transactions Related to Dealings in Certain Debt, authorizes dealings in debt (including bonds, promissory notes, and other receivables) of PdVSA, PDV, CITGO, and Nynas AB that were issued prior to August 25, 2017 (the effective date of Executive Order 13808).

- General License No. 10, Authorizing the Purchase in Venezuela of Refined Petroleum Products from Petróleos de Venezuela, S.A. (PdVSA), authorizes U.S. persons in Venezuela to purchase refined petroleum products for personal, commercial, or humanitarian use from PdVSA and entities majority-owned by PdVSA.

- General License No. 11, Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts with Petróleos De Venezuela, S.A. (PdVSA), authorizes U.S. persons and employees of non-U.S. entities in third countries (*i.e.*, countries other than the United States or Venezuela) to participate in transactions otherwise prohibited by Executive Order 13850 that are necessary for the maintenance or wind down of operations, contracts, or other agreements involving PdVSA or entities majority-owned by PdVSA. General License No. 11 also authorizes U.S. financial institutions to reject certain non-U.S. funds transfers involving PdVSA and non-U.S. entities. General License No. 11 expires on March 29, 2019.

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[1] OFAC, *Treasury Sanctions Venezuela's State-Owned Oil Company, Petroleos de Venezuela, S.A.* (Jan. 28, 2019), https://home.treasury.gov/news/press-releases/sm594 [hereinafter "Treasury Press Release"].
[2] *Id.*
[3] OFAC also amended General License 3, "Authorizing Transactions Related to, Provisions of Financing for, and Other Dealings in Certain Bonds," to cross-reference the new general licenses.

- General License No. 12, Authorizing Certain Activities Necessary to Wind Down of Operations or Existing Contracts with Petróleos de Venezuela, S.A. (PdVSA), authorizes (1) all transactions and activities prohibited by Executive Order 13850 that are ordinarily incident and necessary to the purchase and importation into the United States of petroleum and petroleum products from PdVSA or entities majority-owned by PdVSA, through April 28, 2019; and (2) all transactions and activities prohibited by Executive Order 13850 that are ordinarily incident and necessary to the wind down of other operations, contracts, or other agreements, including the importation into the United States of other goods, services, or technology, through February 27, 2019.

- General License No. 13, Authorizing Certain Activities Involving Nynas AB, authorizes dealings with Nynas AB, as well as its subsidiaries, so long as they are the only PdVSA-related entities involved in the transaction. Like General License No. 7—covering PDV and CITGO—General License No. 13 expires on July 27, 2019.

- General License 14, Official Business of the United States Government, carves out a generally applicable exception and authorizes all transactions that are for the conduct of the official business of the U.S. government by government employees, grantees, or contractors thereof.

Collectively, the general licenses are intended to allow U.S. businesses a period of time to wind down their dealings with PdVSA, and in particular PdVSA-owned entities with a larger relationship with the United States, such as PDV, CITGO, and Nynas AB. However, most of these general licenses are set to expire by July 27, 2019 (or earlier), signaling that the relief is intended to be temporary.

## Key Takeaways

***Venezuela Is in the Crosshairs***

Monday’s action underscores that Venezuela is a key foreign policy priority for the Trump administration, as well as a “must win” proposition from a domestic and international politics perspective. In contrast to recent Iran-related developments, there are signs of an emerging, international coalition to maintain pressure on the Maduro regime. For example, on January 26, following recognition of Venezuelan opposition leader Juan Guaidó as Venezuela’s interim president by the Trump administration, several European nations issued an ultimatum to the Maduro administration to call new elections within eight days (and, if the demand is not met, the countries pledged to recognize Guaidó as Venezuela’s leader).[4] By contrast, China, Iran, Russia, Syria, and Turkey have opposed any U.S. intervention in Venezuela, a reminder of the broader geopolitical uncertainty against which the crisis in Venezuela is unfolding.[5]

***OFAC Has Room to Maneuver***

In late 2018, National Security Advisor John Bolton grouped Venezuela with Cuba and Nicaragua as the so-called “Troika of Tyranny.”[6] In addition to the immediate effects of the PdVSA designation, it is foreseeable that sanctions targeting Venezuela—and, potentially, other countries in Latin America—may increase in the near future.

With respect to Venezuela, Monday’s designation of PdVSA leaves the U.S. government several sanctions-related options for ratcheting up pressure on the Maduro regime. Among other steps, OFAC could restrict all exports of

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[4] *Venezuela crisis: Maduro given ultimatum by European leaders*, BBC NEWS (Jan. 26, 2019), https://www.bbc.com/news/world-latin-america-47014322.
[5] Rick Noack, *The divide on Venezuela: Who’s supporting Maduro, and who’s following the U.S. lead in recognizing Guaidó*, WASHINGTON POST (Jan 28, 2019), https://www.washingtonpost.com/world/2019/01/28/divide-venezuela-whos-supporting-maduro-whos-following-us-lead-recognizing-guaid/.
[6] Rafael Bernal, *Bolton dubs Cuba, Venezuela and Nicaragua the ‘Troika of Tyranny’*, THE HILL (Nov. 1, 2018, 1:47 PM), https://thehill.com/latino/414333-bolton-dubs-cuba-venezuela-and-nicaragua-the-troika-of-tyranny.

Venezuelan petroleum products to the United States, or impose sanctions against leaders of the Venezuelan military who continue to support Maduro. In addition, the European Union and/or other nations may impose their own, complementary sanctions targeting Venezuela (as the European Union did following Russia's annexation of Crimea).

Notably, the Department of the Treasury's press release clarified that the designation of PdVSA "need not be permanent," explicitly stating that sanctions relief could be forthcoming in exchange for the Maduro regime relinquishing power.[7] In particular, the press release advises, "The path to sanctions relief for PdVSA is through the expeditious transfer of control to the Interim President or a subsequent, democratically elected government. . . . The United States has made clear that we will consider lifting sanctions for those who take concrete, meaningful, and verifiable actions to support democratic order and combat corruption in Venezuela, including PdVSA."[8]

***OFAC Did Not Impose a Wind-Down Reporting Requirement***

On April 6, 2018, OFAC designated to the SDN List seven Russian oligarchs, 12 companies they owned or controlled, 17 senior Russian government officials, a state-owned Russian weapons trading company, and a Russian bank. As with Monday's designation of PdVSA, OFAC issued a series of general licenses authorizing covered parties to wind down contracts and operations within a specified period. However, the Russia-related general licenses required U.S. persons to submit to OFAC "a comprehensive detailed report of each transaction" executed pursuant to the general licenses.

By contrast, the PdVSA-related general licenses do not impose reporting obligations on U.S. persons (although transactions executed pursuant to the general licenses are subject to general OFAC recordkeeping requirements). This change in approach will reduce the compliance burden on U.S. companies that engage in transactions under the general licenses.

## Conclusion

The Trump administration continues to pursue foreign policy objectives through aggressive use of U.S. sanctions. U.S. companies with dealings with Venezuela should assess whether the designation of PdVSA affects their operations as soon as possible. As the situation in Venezuela continues to unfold, investors and multinational companies should continue to monitor for new developments and consult with sanctions counsel regarding the risks of current and anticipated dealings involving Venezuela.

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[7] Treasury Press Release.
[8] *Id.*