

## ▶ U.S. INCREASES PRESSURE ON VENEZUELA AND PETROLEOS DE VENEZUELA, S.A.

Further to our circular [Venezuela — U.S. sanctions imposed on PdVSA](#), and based on recent developments and statements by the U.S. authorities, caution should be exercised in all dealings with PdVSA.

[Freehill, Hogan & Mahar](#) have issued the following Client Alert for Members' reference.

### INTRODUCTION

On January 28, 2019 the U.S. designated Petroleos de Venezuela S.A. ("PdVSA") to the U.S. Specially Designated Nationals List ("SDN List"). The immediate effect was that U.S. persons were generally prohibited from engaging in any transactions with PdVSA and all of PdVSA's property and interest in property in the United States were blocked. These restrictions also applied to any entity 50% or more owned by PdVSA.

U.S. SDN List, in and of itself, does not have extraterritorial effect; that is, the naming of an entity to the SDN List does not automatically mean that non-U.S. persons are subject to sanctions if they deal with that entity. However, depending on the authorization under which the designation to the SDN List was made, or depending on whether certain other sanctions legislation incorporates the SDN List, the naming of an entity to the SDN List can impact non-U.S. persons.

### THE DESIGNATION OF PDVSA

When PdVSA was designated to the SDN List, the U.S. Office of Foreign Asset Control ("OFAC") simultaneously issued a number of general licenses, which authorized U.S. persons to wind down their transactions with PdVSA and its subsidiaries within specified time frames. However, those licenses did not apply to non-U.S. persons. Also, while the general licenses permitted U.S. persons to continue transactions with PdVSA up until varying deadlines, they also provided that no payments could be made directly to PdVSA for the purchase of PdVSA petroleum and petroleum products. Instead, payment is required to be made into a blocked, interest-bearing account in the United States. Finally, the exportation of diluents from the U.S. to Venezuela was prohibited from January 28, 2019 forward.

PdVSA was designated to the U.S. SDN List under Executive Order 13850 dated November 1, 2018. Although PdVSA was not named to the SDN list until January 28, 2019, when it was named it was pursuant to the authorization set forth in E.O. 13850. That Executive Order provides for the blocking of all property of the United States of any person determined:

- i. to operate in the gold sector of the Venezuelan economy or in any other sector of the Venezuelan economy as may be determined by the Secretary of Treasury, in consultation with the Secretary of State;
- ii. to be responsible for or complicit in, or to have directly or indirectly engaged in, any transaction or series of transactions involving deceptive practices work and corruption and the government of Venezuela or projects or programs administered by the government of Venezuela, or to be an immediate adult family member of such person;
- iii. to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any activity or transaction described in subsection (a)(i) of this section, or any person whose property and interests in property are blocked pursuant to this order;

PdVSA is a person whose property and interests in property are blocked under the Order. When PdVSA was designated on January 28 the Department of the Treasury stated that it was being added to the SDN List for operating in the oil sector of the Venezuelan economy.

## IMPACT ON NON-U.S. PERSONS

While there was no specific sanction aimed at non-U.S. persons transacting business with PdVSA, there was the potential that non-U.S. persons could be subject to sanctions under Sections 1(a)(i) or 1(a)(iii) of E. No. 13850, either for operating in the Venezuelan oil sector, or for providing material assistance to or support for PdVSA. Section 1(a)(iii) provided for the blocking of property and interest in property in the United States of any person determined

*“to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, any activity or transaction described in subsection (a)(ii) of this section, or any person whose property and interests in property are blocked pursuant to this order.”*

While any supply of ocean transportation to PdVSA could conceivably be construed as material assistance or support under Section 1(a)(iii) of E.O. 13850, there was no early indication that the U.S. authorities would move in that direction. On January 31, 2019 OFAC issued FAQ 657 which partially addressed this issue. It reads:

**657. I am a non-U.S. entity that purchases petroleum and petroleum products from Petroleos 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]

While the question posed by the FAQ is very clear, the answer less so. However, since the question was not answered in the negative, it appeared that the answer could be taken to mean that a non-U.S. person could continue to purchase petroleum and petroleum products from PdVSA, as long as there was no U.S. nexus. Since purchasing would necessarily include transporting those products from PdVSA to the buyer, it seemed logical that ocean transportation would also be permitted.

## IMPLEMENTATION OF EXECUTIVE ORDER 13850

However, as Executive Order 13850 has begun to be implemented, the U.S. is sending clear signals that the transaction of business with PdVSA by non-U.S. persons may be sanctionable. On March 12 the U.S. National Security Advisor, John Bolton, issued a tweet which forewarned of an aggressive application of E.O. 13850. Following a five day electrical blackout in Venezuela, the National Assembly, controlled by the opposition to the government of President Maduro, declared that all oil exports to Cuba must be suspended. In the wake of that declaration, Mr. Bolton tweeted on March 12:

*“The Venezuelan National Assembly has decreed the suspension of crude exports to Cuba following the collapse of the national electrical grid. Insurance companies and flag carriers that facilitate these give-away shipments to Cuba are now on notice.”*

On April 5, in fulfillment of Mr. Bolton's warning, the M/T DESPINA ANDRIANNA, along with her Owners and Managers, was designated to the SDN List for operating in the oil sector of the Venezuelan economy.

It appears that the M/T DESPINA ANDRIANNA had for a number of years carried petroleum products from PdVSA to Cuba. Therefore, there would now appear to be a clear risk of sanctions for any vessel engaged in trade between PdVSA and Cuba. On March 25, 2019 Reuters published an [article](#) reporting that the U.S. State Department has been calling foreign suppliers of PDVSA warning them that any type of oil trade with PDVSA would be considered a breach of sanctions.

This report was confirmed by the U.S. Special Representative for Venezuela, Mr. Elliot Abrams, in a March 29, 2019 State Department press briefing, in which he clearly indicated that the U.S. authorities 503371.1 may consider sanctionable shipments of petroleum and petroleum products to and from PDVSA from all third countries. Mr. Abrams said:

*"We have had conversations with foreign oil traders, with foreign governments, really along the same lines – that is, you should be supporting Interim President Guaido, you should not be supporting this regime, **you should not be buying oil from this regime and giving them cash.** And we've noted that **we have a wide, broad net with our sanctions**, and so we've warned people, **be careful not to get caught in that net by activities that you may think don't come into it but actually are caught by it.**" (emphasis added)*

In addition, Mr. Abrams indicated that the supply of petroleum products to PdVSA by non-U.S. persons might also be treated as sanctionable.

*"I would say it's very logical. We impose our sanctions. What does the regime do? The regime tries to figure out other ways to get around them. It tries to find new customers. It tries to find **new sources of imports.** So what do we do? We watch carefully, and we can see ships moving and we could see new contracts with new companies, and when we do, we talk to shippers or we talk to refiners or we talk to governments and we say you should not be doing that. That's what we're doing." (emphasis added)*

## SUMMARY

At this point, OFAC has not articulated a bright line test for what constitutes sanctionable activity for non-U.S. persons with respect to PDVSA. However, it is clear that there is a risk of sanctions for any vessel carrying petroleum products from PdVSA to Cuba. From the comments of Special Representative Abrams, it would also appear that OFAC considers the purchase of petroleum products from, or the supply petroleum products to, PdVSA to be sanctionable as well. Based on recent developments and statements by the U.S. authorities, caution should be exercised in all dealings with PdVSA. At a minimum, non-U.S. persons should ensure that there is no U.S. nexus in any dealings they have with PdVSA. However, non-U.S. persons should now understand that there may be some risk of sanctions if they engage in transactions with PdVSA.

*Disclaimer: This Client Alert provides only a general summary of the current U.S. sanctions against Petroleos de Venezuela, S.A. and is not intended to constitute comprehensive legal advice. Specific legal advice should be taken with respect to each individual inquiry regarding the Advisory. For additional clarification, please feel free to contact Bill Juska ([juska@freehill.com](mailto:juska@freehill.com)), Gina Venezia ([venezia@freehill.com](mailto:venezia@freehill.com)) or Bill Pallas ([pallas@freehill.com](mailto:pallas@freehill.com))*