

# U.S. Sanctions Venezuela's Oil Sector by Adding PdVSA to the SDN List; OFAC Issues General Licenses Temporarily Authorizing Certain Activities by U.S. Persons

January 29, 2019

International Trade Controls

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On January 28, 2019, the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) [announced](#) the imposition of comprehensive sanctions against Petróleos de Venezuela, S.A. (PdVSA), Venezuela's state-owned oil company, by its addition to the List of Specially Designated Nationals and Blocked Persons (SDN List). This designation is intended, among other things, to deprive President Maduro's government of revenue from the sale of petroleum and petroleum products to the United States.

At the same time, OFAC issued several new general licenses temporarily authorizing certain activities by U.S. persons involving PdVSA or entities owned, directly or indirectly, 50% or more by PdVSA. The expiration dates of most of these general licenses range from February 27, 2019, to July 27, 2019, depending on the authorized activity.

Because the United States does not maintain any secondary sanctions targeting dealings with Venezuelan SDNs by non-U.S. persons, the designation of PdVSA does not directly affect non-U.S. entities that engage in dealings with PdVSA or its majority-owned subsidiaries so long as such dealings occur entirely outside of the United States and do not have a U.S. nexus or involve U.S. persons.

## Background

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In May 2018, incumbent President Nicolás Maduro was declared the winner of the Venezuela presidential election, despite wide criticism and disputed results. On January 10, 2019, the National Assembly of Venezuela declared the election results invalid and named Juan Guaidó, head of the National Assembly of Venezuela, as interim president. On January 23, 2019, President Trump [announced](#) his recognition of Guaidó as the legitimate president of Venezuela, and his administration signaled a willingness to take further action—including the imposition of sanctions—to pressure Maduro to resign.

In imposing sanctions against PdVSA, Treasury Secretary Steven Mnuchin [emphasized](#) the Maduro administration's use of PdVSA as a "vehicle for embezzlement" and corruption, and explained that the sanctions will ramp up pressure on Maduro and his inner circle. National

Security Advisor John Bolton indicated that the sanctions would block \$7 billion in assets and likely result in losses of more than \$11 billion in revenue over the next year. In announcing the measures, Bolton again called upon Venezuelan military and security forces to engage in a peaceful transition of power.

## **New Venezuela Executive Order**

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On January 25, 2019, President Trump signed an [Executive Order](#) amending the definition of “Government of Venezuela” in Executive Orders 13692, 13808, 13827, 13835, and 13850 to explicitly include both PdVSA and persons related to the Maduro regime. Specifically, the definition of “Government of Venezuela” for the purposes of these executive orders will now include “the state and Government of Venezuela, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Venezuela and Petróleos de Venezuela, S.A. (PdVSA), any person owned or controlled, directly or indirectly, by the foregoing, and any person who has acted or purported to act directly or indirectly for or on behalf of, any of the foregoing, including as a member of the Maduro regime.”

OFAC [FAQ #649](#), published concurrently with the new Executive Order, states that the purpose of the Order is to broaden the term “Government of Venezuela” to include persons “that have acted or purported to act on behalf of the Government of Venezuela, including members of the Maduro regime.”

## **SDN Designation**

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As noted, on January 28, 2019, OFAC added PdVSA to the SDN List, thereby significantly broadening the sanctions that had previously been imposed against PdVSA, which for the most part had targeted new debt and new equity of PdVSA.

The designation of PdVSA as an SDN means that, except as licensed by OFAC, U.S. persons may not engage in any transactions or dealings with or involving PdVSA or entities in which it holds, alone or collectively with other SDNs, directly or indirectly, a 50% or greater interest. Except as otherwise provided by OFAC, any property or interest in property of PdVSA or entities in which it owns a 50% or greater interest that comes into the United States, or the possession or control of a U.S. person, must be blocked.

## **New General Licenses**

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Also on January 28, 2019, OFAC issued several new general licenses and amended one existing general license, authorizing U.S. persons to engage in certain activities involving PdVSA and its majority-owned subsidiaries, in each case subject to restrictions and limitations set forth in the license. Each of these licenses is summarized below.

### **General License 3A**

OFAC amended General License 3 by issuing a superseding [General License 3A](#). General License 3 had authorized all transactions related to, the provision of financing for, and other dealings in (i) bonds specified in the Annex to the license, and (ii) bonds that were issued both prior to August 25, 2017, and by U.S. person entities owned or controlled, directly or indirectly, by the government of Venezuela. General License 3A amends the second of these two

authorizations to apply to U.S. person entities owned or controlled, directly or indirectly, by the government of Venezuela *other than* Nynas AB (Nynas), PDV Holding, Inc. (PDVH), CITGO Holding, Inc. (CITGO), and any of their subsidiaries. Dealings by U.S. persons with the excluded entities are covered by General Licenses 7, 9, and 13.

### **General License 7**

[General License 7](#) authorizes, until July 27, 2019, all transactions and activities with respect to PDVH, CITGO, and any of their subsidiaries, where these are the only PdVSA entities involved in the transaction or activity.

General License 7 also authorizes, until April 28, 2019, PDVH, CITGO, and their subsidiaries to engage in all transactions and activities that are “ordinarily incident and necessary to the purchase and importation of petroleum and petroleum products from” PdVSA or any entities owned 50% or more, directly or indirectly, by PdVSA.

Payments under this license to or for the direct or indirect benefit of a blocked person other than PDVH, CITGO, or their subsidiaries must be placed in a blocked, interest-bearing account in the United States.

This license does not authorize the export or reexport of any goods, services, or technology, directly or indirectly, by U.S. persons or from the United States, to PdVSA or any of its majority-owned subsidiaries, other than to PDVH, CITGO, or their subsidiaries.

### **General License 8**

Pursuant to [General License 8](#), Chevron Corporation, Halliburton, Schlumberger Limited, Baker Hughes, and Weatherford International are authorized to engage in all activities and transactions ordinarily incident and necessary to operations in Venezuela that involve PdVSA or any entity 50% or more owned by PdVSA. General License 8 authorizes such activities until July 27, 2019.

General License 8 does not authorize the exportation or reexportation of diluent from the United States to Venezuela.

### **General License 9**

[General License 9](#) authorizes U.S. persons to engage in all transactions and activities that are ordinarily incident and necessary to dealings in any debt of PdVSA or any entity owned 50% or more by PdVSA issued prior to August 25, 2017, provided that any divestment or transfer of, or facilitation of divestment or transfer of, any holdings in such debt must be to a non-U.S. person. The authorized transactions and activities include facilitating, clearing, and settling transactions to divest PdVSA-related debt to a non-U.S. person.

In addition, General License 9 authorizes all transactions and activities by U.S. persons that are ordinarily incident and necessary to dealings in any bonds issued prior to August 25, 2017, of PDVH, CITGO, Nynas, or their subsidiaries.

### **General License 10**

Pursuant to [General License 10](#), U.S. persons in Venezuela may purchase refined petroleum products from PdVSA or any entity owned 50% or more by PdVSA for personal, commercial, or

humanitarian uses. General License 10 does not authorize any commercial resale, transfer, exportation, or reexportation of refined petroleum products.

### **General License 11**

[General License 11](#) authorizes U.S. person employees and contractors of non-U.S. entities located outside of the United States and Venezuela to engage in all transactions and activities ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements involving PdVSA or entities 50% or more owned by PdVSA that were in effect prior to January 28, 2019. Such maintenance and wind-down activities are authorized until March 29, 2019.

General License 11 also allows U.S. financial institutions to reject (rather than block) funds transfers that involve both PdVSA, or any entity owned 50% or more by PdVSA, and non-U.S. entities located outside of the United States and Venezuela, as long as the funds do not originate or terminate in the United States; neither the originator nor the beneficiary is a U.S. person; and the funds are not destined for a blocked account on the books of a U.S. person. This authorization is also in effect until March 29, 2019.

This license does not authorize any transactions or dealings with ALBA de Nicaragua (ALBANISA) or any entity owned, directly or indirectly, 50% or more by it.

### **General License 12**

[General License 12](#) authorizes, until April 28, 2019, all transactions and activities that are ordinarily incident and necessary to the purchase and importation into the United States of petroleum and petroleum products from PdVSA or any entity owned 50% or more by PdVSA. Except as authorized pursuant to General Licenses 7, 8, 11, or 13, any payment made to or for the direct benefit of a blocked person that is ordinarily incident and necessary to give effect to the purchase or importation of petroleum and petroleum products must be made into a blocked, interest-bearing account located in the United States.

General License 12 also authorizes, until February 27, 2019, all transactions and activities ordinarily incident and necessary to the wind down of operations, contracts, or other agreements that involve PdVSA or entities owned 50% or more by PdVSA and that were in effect prior to January 28, 2019. This general license authorizes the importation into the United States of goods, services, and technology other than petroleum or petroleum products. Importantly, in contrast to General License 11, General License 12 does not authorize activities related to the maintenance of such pre-January 28 operations, contracts or agreements, but rather merely their wind-down.<sup>1</sup>

General License 12 does not, however, authorize any of the following: the divestiture or transfer of any debt, equity, or other holdings in, to, or for the benefit of blocked persons; the exportation

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<sup>1</sup> We note that the requirement in subsection (c) of General License 12 to place into a blocked account in the United States payments to or for the direct or indirect benefit of a blocked person does not on its face refer to payments associated with wind-down activities authorized by subsection (b). However, the wind-down authorization in subsection (b) itself refers to the blocking requirement in subsection (c), suggesting that any payments in connection with such wind-down activities to or for the direct or indirect benefit of a blocked person must be made into such a blocked account.

or reexportation of diluents from the United States to Venezuela, PdVSA, or any entity owned 50% or more by PdVSA; or any transactions or dealings with ALBANISA or any entity owned 50% or more by ALBANISA.

### **General License 13**

[General License 13](#) authorizes, until July 27, 2019, all transactions and activities where the only PdVSA entities involved are Nynas or its subsidiaries. Except as authorized by General License 11, any payments made to or for the direct or indirect benefit of a blocked person other than Nynas or its subsidiaries and that come into possession or control of a U.S. person must be placed into a blocked, interest-bearing account in the United States.

This general license does not authorize any exportation or reexportation of goods, services, or technology by a U.S. person or from the United States to PdVSA or any entity owned 50% or more, directly or indirectly, by PdVSA, other than Nynas or its subsidiaries.

### **General License 14**

[General License 14](#) authorizes all transactions that are for the conduct of the official business of the U.S. government by its employees, grantees, or contractors.

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Covington has deep experience advising clients on the legal, policy, and practical dimensions of U.S. sanctions. We will continue to monitor developments in this area, and we are well-positioned to assist clients in understanding how these developments may affect their business operations.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our firm:

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