

OFAC Sanctions Venezuelan State-owned Energy Company PdVSA, Releases New General Licenses and FAQs for Venezuela Sanctions Regime

February 6, 2019

Key Points

- On January 28, 2019, OFAC added the Venezuelan state-owned oil and natural gas company PdVSA to its SDN List.
- As a result, U.S. persons are generally prohibited from engaging in transactions with PdVSA and entities that are owned, 50 percent or more, directly or indirectly by PdVSA and must block property of these entities that are in their possession or control.
- OFAC also amended a prior general license and issued eight new general licenses under the Venezuela sanctions program. These licenses authorize certain transactions by U.S. persons involving PdVSA that U.S. sanctions would otherwise prohibit.
- Companies with business that intersect with PdVSA or the Government of Venezuela—particularly, securities traders and energy companies—should be mindful that they do not engage in transactions that violate restrictions under this complex sanctions regime.

Background

On January 28, 2019, OFAC designated Petróleos de Venezuela, S.A. (PdVSA) on the Specially Designated Nationals and Blocked Persons (SDN) List. As a result of this designation, U.S. persons are prohibited from engaging in nearly all dealings with PdVSA, absent authorization from OFAC. Together with this designation, OFAC issued eight general licenses authorizing certain transactions by U.S. persons that involve PdVSA and amended an existing general license authorizing transactions involving certain Venezuelan sovereign bonds. In recent days, OFAC offered additional guidance surrounding the designation: on January 31, 2019, OFAC issued **11** new Frequently Asked Questions (FAQ) in connection with the PdVSA designation and amended two existing FAQs. On February 1, 2019, OFAC **issued** two amended general licenses, along with two related new FAQs.

Contact

Nnedinma Ifudu Nweke
Partner
nifudu@akingump.com
Washington D.C.
+1 202.887.4013

Wynn Segall
Partner
wsegall@akingump.com
Washington D.C.
+1 202.887.4573

Mahmoud Baki Fadlallah
Partner
mfadlallah@akingump.com
Dubai
+971 4.317.3030

Jonathan Poling
Partner
jpoling@akingump.com
Washington D.C.
+1 202.887.4029

Christian C. Davis
Partner
chdavis@akingump.com
Washington, D.C.
+1 202.887.4529

Melissa J. Schwartz
Partner
mjschwartz@akingump.com
Washington, D.C.
+1 202.887.4539

Nicole M. D'Avanzo
Senior Counsel
ndavanzo@akingump.com
Washington, D.C.
+1 202.887.4557

The PdVSA designation comes amidst significant political upheaval in Venezuela, with the United States, the United Kingdom, Spain, France, Germany and others recently recognizing Juan Guaidó as the Interim President, while other countries, such as Russia and China, have continued to support President Nicolás Maduro. OFAC indicated in a [press release](#) that the United States “has made it clear that [it] will consider lifting sanctions for those who take concrete, meaningful, and verifiable actions to support democratic order and combat corruption in Venezuela, including PdVSA.” OFAC later clarified in [FAQ 660](#) that the “path to sanctions relief for PdVSA and its subsidiaries is through the expeditious transfer of control of the company to Interim President Juan Guaidó or a subsequent, democratically elected government that is committed to taking concrete and meaningful actions to combat corruption, restore democracy, and respect human rights.”

Implications of OFAC’s Designation of PdVSA

As a result of PdVSA’s designation as a SDN, U.S. persons (*e.g.*, U.S. citizens, permanent residents, entities organized in the United States, and persons located in the United States) are generally prohibited from engaging in any transactions or dealings involving PdVSA or its property or interests in property. Additionally, U.S. persons must block any property or interests of PdVSA that are in, or come into, their possession or control. These restrictions apply not only to PdVSA, but also to any entity in which PdVSA has a direct or indirect ownership interest of 50 percent or more (“PdVSA Entities”).

In addition, non-U.S. persons can also be exposed to potential “secondary” sanctions for engaging in certain business involving PdVSA. Specifically, Executive Order 13850 permits (but does not require) the Secretary of the Treasury, in consultation with the Secretary of State, to add to the SDN List any person determined to “have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of” PdVSA Entities or determined “to be owned or controlled by, or to have acted or purported to act for or on behalf of” PdVSA Entities.

Expansion of Sanctions to Potentially Include Persons Operating in Venezuela’s Oil Sector

OFAC designated PdVSA pursuant to Section 1(a)(i) of Executive Order (E.O.) 13850, which allows the United States to broadly impose blocking sanctions on companies that “operate . . . in any other sector of the Venezuelan economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State.” In issuing the PdVSA designation, the U.S. government expressly [stated](#) that persons operating in Venezuela’s oil sector may now be subject to an SDN List designation pursuant to E.O. 13850.

Whether a company “operates” in the oil sector is subject to OFAC’s discretion; however, OFAC states in [FAQ 629](#) that it expects to use its discretion to target, in particular, those who “operate corruptly” and engage in “dishonest or fraudulent conduct, illicit activity, or deceptive transactions” within Venezuela’s oil sector “with the purpose or effect of misappropriating Venezuelan resources” within the oil sector “for

Dallas Woodrum

Counsel
dwoodrum@akingump.com
Washington, D.C.
+1 202.887.4591

Andrew R. Schlossberg

Associate
aschlossberg@akingump.com
Washington, D.C.
+1 202.887.4314

Johann Strauss

Associate
jstrauss@akingump.com
Dubai
+971 4.317.3040

Michael Adame

Associate
madame@akingump.com
Washington, D.C.
+1 202.419.4627

personal, professional, or political gain,” rather than those who operate “legitimately” in Venezuela’s oil sector.

Summary of OFAC General Licenses

In conjunction with the designation of PdVSA, OFAC amended a prior general license and issued eight new general licenses that authorize certain transactions by U.S. persons involving PdVSA Entities. U.S. persons relying on these general licenses must ensure that the transaction at issue meets the specific conditions set forth in the general license.

1. General License 9A: Transactions Involving PdVSA securities

General License 9A (GL-9A) (see [here](#)) authorizes certain transactions related to “PdVSA securities” issued before August 25, 2017, which includes debt of, or equity in, PdVSA Entities (including bonds listed in the annex to GL-9A, promissory notes, and other receivables). GL-9A is very complex, and the extent to which a particular transaction is authorized depends on the PdVSA entity and type of transaction at issue, as briefly described below:

- **Securities Issued by PdVSA Entities (excluding Nynas, PDVH, and CITGO):** All transactions and activities involving PdVSA securities issued before August 25, 2017 by PdVSA Entities (excluding Nynas AB (Nynas), PDV Holdings, Inc. (PDVH) and CITGO Holding, Inc. (CITGO)) are authorized, provided any divestment or transfer of holdings are made to a **non-U.S. person**. The aforementioned authorized transactions and activities include facilitating, clearing, and settling transactions to divest PdVSA securities to a non-U.S. person, including on behalf of U.S. persons. OFAC explains in [FAQ 650](#) that if a U.S. broker or financial institution involved in a transfer or divestment of such securities has information in its possession leading it to know or have reason to know that the buyer is a U.S. person, then the U.S. broker or financial institution will be held responsible if it does not take appropriate steps to ensure that the trade is not consummated. OFAC adds that it expects U.S. persons to conduct due diligence on their own direct customers, and it will consider the totality of the circumstances surrounding the processing of the transaction to determine what, if any, enforcement action to take.
- Additionally, GL-9A authorizes all transactions and activities that are ordinarily incident and necessary to facilitating, clearing, and settling trades of holdings in PdVSA securities issued before August 25, 2017 provided that such trades were placed prior to 4:00 p.m. eastern standard time on January 28, 2019. OFAC explains in [FAQ 661](#) that this authorization “aims to ensure that trades that were placed prior to the imposition of blocking sanctions on PdVSA are allowed to settle in the ordinary course, irrespective of whether the sale or transfer is to a U.S. person.”
- GL-9A also authorizes all transactions and activities, including transactions in securities and security derivatives, that are ordinarily incident and necessary to the wind down of financial contracts or other agreements that were entered into prior to 4:00 p.m. eastern standard time on January 28, 2019 involving, or linking to, PdVSA securities issued prior to August 25, 2017. This authorization is in effect

until 12:01 a.m. eastern standard time on March 3, 2019. OFAC explains in [FAQ 661](#) that this authorization “allows certain financial contracts and agreements that were entered into prior to the imposition of blocking sanctions on PdVSA that involve or are linked to PdVSA securities to be wound down, including resolving the purchase and sale of securities, securities lending, repurchase agreements, and swaps and derivative contracts in securities.”

- **Bonds Issued by Nynas, PDVH, and CITGO:** All transactions and activities involving bonds issued by these entities and their subsidiaries before August 25, 2017 are generally authorized.
- **U.S. Persons’ Holding PdVSA Securities:** In [FAQ 661](#), OFAC clarifies that U.S. persons may continue to *hold* their interests in PdVSA securities issued prior to August 25, 2017.
- **Restrictions on U.S. Persons’ Purchases of PdVSA securities:** Like GL-3B, GL-9A **does not** generally authorize U.S. persons to purchase or acquire new interests in PdVSA bonds or other debt or equity issued by PdVSA. However, as explained in [FAQ 661](#), “to the extent that divesting or transferring PdVSA-related debt or equity from U.S. persons to non-U.S. persons requires engaging in certain securities-related transactions with PdVSA and its 50 percent or more owned subsidiaries, such as purchasing or settling purchases of PdVSA debt or equity,” GL-9A would authorize U.S. persons to engage in such transactions.
- **Non-U.S. Persons:** In [FAQ 661](#), OFAC explains that while non-U.S. persons may continue to deal in PdVSA debt and equity, to the extent such transactions involve U.S. persons or the U.S. financial system, they must comply with the terms of GL-9A and may not involve sales of interests in such securities to U.S. persons (other than as described above) as U.S. persons are largely prohibited from purchasing such interests.

2. General License 3B: Transactions Involving Venezuelan Bonds

General License 3B (GL-3B) (see [here](#)) authorizes U.S. persons to engage in transactions involving certain bonds issued **prior to August 25, 2017** by the Government of Venezuela that are specified in the annex (“Venezuela Bond List”), provided that any divestment or transfer of holdings in such bonds must be to non-U.S. persons. (A previous version of this general license did not include a requirement that sales or transfers of these bonds must be to non-U.S. persons.)

In addition, GL-3B authorizes all transactions and activities that are ordinarily incident and necessary to facilitating, clearing, and settling trades of holdings in the bonds on the Venezuela Bond List, provided that such trades were placed prior to 4:00 p.m. ET on February 1, 2019. OFAC explains in [FAQ 662](#) that “this authorization aims to ensure that trades that were placed prior to the issuance of General License 3B are allowed to settle in the ordinary course, irrespective of whether the sale or transfer is to a non-U.S. person.”

GL-3B also authorizes all transactions and activities, including transactions in securities and security derivatives, that are ordinarily incident and necessary to the wind down of financial contracts or other agreements that were entered into prior to 4:00 p.m. ET time on February 1, 2019. OFAC explains in [FAQ 662](#) that “[t]his

authorization allows certain financial contracts and agreements that were entered into prior to the issuance of General License 3B that involve or are linked to the bonds specified in the [Venezuela Bond List] to be wound down, including resolving the purchase and sale of securities, securities lending, repurchase agreements, and swaps and derivative contracts in securities.”

GL-3B authorizes transactions involving bonds issued **prior to August 25, 2017** by U.S. person entities owned or controlled, directly or indirectly, by the government of Venezuela (excluding Nynas, PDVH, CITGO, and their subsidiaries). However, GL-9A, discussed above, authorizes certain transactions involving securities issued before August 25, 2017 by PdVSA entities that are not authorized under GL-3B.

Finally, OFAC cautions in [FAQ 662](#) that non-U.S. persons may continue to deal in the bonds on the Venezuela Bond List, but to the extent that transactions involve U.S. persons or the U.S. financial system, such transactions must comply with the terms of GL-3B and may not involve sales of any interests in such bonds to U.S. persons (other than as described above) since U.S. persons are largely prohibited from purchasing such interests.

3. General Licenses 7 and 13: Transactions Involving PDVH, CITGO, and Nynas

General License 7 (GL-7) (see [here](#)) and General License 13 (GL-13) (see [here](#)) authorize U.S. persons to engage in certain transactions and activities involving PDVH, CITGO, and Nynas, as well as their subsidiaries. The authorizations, which are summarized below, are each valid for a limited time period:

- **Until July 27, 2019**, GL-7 authorizes U.S. persons to engage in all transactions or activities with PDVH and CITGO (and their respective subsidiaries) where the only PdVSA entities involved are PDVH, CITGO, or their respective subsidiaries. Similarly, GL-13 authorizes U.S. persons to engage in all transactions or activities with Nynas where the only PdVSA entities involved are Nynas AB or any of its subsidiaries.
- **Until April 28, 2019**, GL-7 authorizes PDVH, CITGO, and their respective subsidiaries to engage in all transactions and activities ordinarily incident and necessary to the purchase and importation of petroleum and petroleum products from PdVSA Entities.

For the above authorizations, any payment to or for the direct or indirect benefit of PdVSA and other blocked persons (excluding PDVH, CITGO, Nynas and their subsidiaries) that is ordinarily incident and necessary to give effect to authorized transactions must be placed into a blocked, interest-bearing account located in the United States. These authorizations also do not permit any export or reexport of goods, services, or technology by U.S. persons, or from the United States, to PdVSA Entities (excluding PDVH, CITGO, Nynas, and their subsidiaries).

4. General License 11: Certain Transactions by U.S. Person Employees/Contractors and U.S. Financial Institutions Involving PdVSA Entities

Through General License 11 (GL-11) (see [here](#)), OFAC has authorized activities related to the wind-down of operations or existing contracts involving PdVSA. The scope of these wind-down general licenses varies depending on the activity involved as follows:

- **U.S. Employees and Contractors of Non-U.S. Entities Located in Third Countries:** Until March 29, 2019, GL-11 authorizes U.S. person employees and contractors of non-U.S. entities (located outside the United States and Venezuela) to engage in all transactions and activities that are ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements involving PdVSA Entities that were in effect prior to January 28, 2019.
- **Rejection of Certain Funds Transfers by U.S. Financial Institutions:** Until March 29, 2019, GL-11 authorizes U.S. financial institutions to reject (instead of block) funds transfers involving both a PdVSA Entity and a non-U.S. entity located outside the United States or Venezuela, provided that (i) the funds transfers originate and terminate outside the United States, (ii) neither the originator nor the beneficiary is a U.S. person, and (iii) the funds are not destined for a blocked account on the books of a U.S. person.

Neither of the above authorizations permits transactions or dealings with ALBA de Nicaragua (“ALBANISA”) or any entity that it owns 50 percent or more.

5. General License 12: Imports of Petroleum from PdVSA Entities Into the United States and Wind Down of Pre-Sanctions Contracts

Through General License 12 (GL-12) (see [here](#)), OFAC has authorized activities related to the wind-down of operations or existing contracts involving PdVSA. The scope of these wind-down general licenses varies depending on the activity involved as follows:

- **Purchase and Importation into the United States of Petroleum and Petroleum Products:** Until April 28, 2019, GL-12 authorizes U.S. persons to engage in 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 Entities. Under this general license, any payments for the direct or indirect benefit of PdVSA Entities must generally be made into a blocked, interest-bearing account based in the United States. OFAC explains in [FAQ 658](#) that “transactions” authorized by this general license include swaps and non-cash transactions; however, any funds or non-cash proceeds owed to PdVSA Entities must generally be blocked.
- **Wind-Down of Operations and Contracts:** Until February 27, 2019, U.S. persons are generally authorized to engage in all transactions that are ordinarily incident and necessary to the wind down of operations, contracts, or other agreements involving PdVSA Entities that were in effect prior to January 28, 2019, including

the importation into the United States of goods, services, or technology not otherwise authorized in the provision described above.

GL-12 does not authorize: (i) the divestiture or transfer of any debt, equity, or other holdings in, to, or for the benefit of blocked persons; (ii) the exportation or reexportation of any diluents from the United States to Venezuela or PdVSA Entities; or (iii) transactions or dealings with ALBANISA or any entity that it owns 50 percent or more.

6. General License 8: Transactions Involving Specific Energy Companies

Until July 27, 2019, General License 8 (GL-8) (see [here](#)) authorizes all transactions and activities ordinarily incident and necessary to operations in Venezuela involving PdVSA Entities for the following entities and their subsidiaries: Chevron Corporation; Halliburton; Schlumberger Limited; Baker Hughes, a GE Company; and Weatherford International, Public Limited Company. GL-8, however, does not authorize the exportation or reexportation of diluents from the United States to Venezuela.

7. General License 10: Refined Petroleum Products for Personal, Commercial, or Humanitarian Uses

General License 10 (GL-10) (see [here](#)) authorizes U.S. persons in Venezuela to purchase refined petroleum products for personal, commercial, or humanitarian uses from PdVSA Entities, provided the transaction does not involve any commercial resale, transfer, exportation, or reexportation of refined petroleum products. OFAC clarifies in [FAQ 656](#) that “refined petroleum products” includes gasoline, and that GL-10 authorizes, among other things, purchases of refined petroleum products by U.S. commercial airlines providing passenger or cargo services in Venezuela for the purposes of fueling aircraft in Venezuela. In addition, GL-10 authorizes purchases of refined petroleum products for use to power a means of conveyance or a household good (such as a generator) in Venezuela.

8. General License 14: Official Business of the U.S. Government

Pursuant to General License 14 (GL-14) (see [here](#)), all transactions that are for the conduct of the official business of the U.S. government by employees, grantees, or contractors are authorized, provided that the transaction is not prohibited by any other U.S. sanctions program administered by OFAC.

Other Noteworthy Actions by OFAC

On January 25, 2019, OFAC issued an E.O. titled “Taking Additional Steps to Address the National Emergency with Respect to Venezuela”, which expanded the definition of “Government of Venezuela” used in Executive Orders 13692, 13808, 13827, 13835 and 13850. In connection with this action, OFAC issued [FAQ 649](#), which explains that the executive order “broadens the definition of the term ‘Government of Venezuela’ to include persons that have acted, or have purported to act, on behalf of the Government of Venezuela, including members of the Maduro regime.” This expansion

of the term “Government of Venezuela” means that additional persons are now subject to sanctions restrictions that target the Government of Venezuela, including restrictions related to debt and equity issued by the Government of Venezuela, dividend payments or other distributions of profits to the Government of Venezuela, purchases of securities from the Government of Venezuela, and debts owed to the Government of Venezuela, among other sanctions restrictions that have been implemented over the past two years.

Implications for Business

OFAC’s designation of PdVSA is significant, given the myriad ties that PdVSA has with U.S. companies and its role in the global energy market. Companies with business that intersect with PdVSA or the Government of Venezuela—particularly, securities traders and energy companies—should be mindful that they do not engage in transactions that violate restrictions under this complex sanctions regime. While non-U.S. companies are not generally required to comply with U.S. sanctions against Venezuela, they must also ensure that PdVSA-related transactions that may involve U.S. persons or the U.S. financial system are authorized under relevant General Licenses. Additionally, the U.S. government has discretion to impose sanctions on non-U.S. persons determined to “have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of” PdVSA Entities.

The medium and long-term impact of PdVSA’s designation remains to be seen, as the U.S. government has specially tied PdVSA’s sanctions fate to a political event: the transfer of control of the company to Interim President Juan Guaidó or a subsequent, democratically elected government. We will continue to monitor developments related to Venezuela and will publish relevant updates.