



ONPOINT / A legal update from Dechert's International Trade Group

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OFAC Clarifies, and Further Complicates, Sanctions on Venezuela, PdVSA

On February 1, 2019, the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") issued guidance in the form of [Frequently Asked Questions](#) ("FAQs") relating to sanctions imposed on January 28, 2019 against Venezuela and Petróleos de Venezuela SA ("PdVSA"). Many of the FAQs clarify how U.S. persons may properly utilize the general licenses ("GLs") announced January 28. Later the same day, however, OFAC issued two amended GLs that further restricted how U.S. persons can deal in Government of Venezuela ("Ven") bonds but also somewhat expanded the prior authorization that covered trading in PdVSA bonds. The upshot is that Ven bonds and PdVSA bonds are now effectively subject to the same restrictions, although the former are not treated as blocked property by OFAC. Our coverage of the sanctions imposed on January 28 is available [here](#).

Restrictions on Trading of Venezuelan Bonds

The January 28 sanctions resulted in PdVSA's addition to OFAC's Specially Designated Nationals and Blocked Persons ("SDN") List, which means that all property of PdVSA (including bonds) is blocked without further authorization from OFAC. While U.S. investors are now prohibited from purchasing PdVSA bonds, GL 9, issued at the same time, permits U.S. investors to hold previously purchased PdVSA debt and to sell PdVSA bonds to non-U.S. entities. Existing Ven bonds, which are not blocked, were initially unaffected by the January 28 sanctions imposed against PdVSA. However, OFAC announced amendments to an existing general license late on February 1 that essentially eliminated the distinction between U.S. investors' treatment of existing Ven bonds and existing PdVSA bonds.

- **Trading Related to Government of Venezuela Bonds:** Under new [GL 3B](#), restrictions pertaining to trading in other Ven-issued bonds are now the same as those pertaining to trading in PdVSA bonds under [GL 9A](#). U.S. persons can hold such bonds, but cannot purchase any additional bonds, and can transfer such bonds to non-U.S. persons only. While the distinction between trading PdVSA bonds and trading other Venezuelan government bonds is thus eliminated, an important difference remains: PdVSA bonds (might) need to be treated as blocked property unless and until they are divested. Holders of blocked property must file reports with OFAC 10 days after the property is blocked, with annual reporting requirements thereafter.
- **Clarity for the Market Regarding Pending Trades:** The amended [GL 9A](#) expressly authorizes settlement of all trades of PdVSA securities that were placed prior to 4 p.m. ET on January 28, 2019. Such settlement appeared to be covered under the prior version of GL 9, but the revised language more clearly authorizes settlement and clearance of trades that were pending at the time the sanctions were announced. OFAC also issued [FAQ 661](#) that notes, in part, that the updated language "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 non-U.S. person."

- **Wind-Down Period for Derivatives Trading:** GL 3B and GL 9A now provide a wind-down period until March 3, 2019 for U.S. persons to unwind positions in derivative contracts related to Ven and PdVSA securities.
- **Due Diligence to Ensure Non-U.S. Person Buyers:** New guidance at [FAQ 650](#) clarifies the expected level of due diligence associated with ensuring transfers or divestment of debt are consistent with the terms of GL 9A (and, now, GL 3B) – in particular, the requirement that U.S. persons can transfer or divest such debt only to non-U.S. persons. OFAC guidance clarifies that financial institutions or registered broker-dealers in securities “may rely upon the information ordinarily available to them for purposes of conducting the activities authorized under the GL.” This means that a seller is not expected to conduct any independent due diligence to determine the identity of a prospective buyer. However, if a “U.S. broker or financial institution involved in a transfer or divestment of such debt 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.” In other words, traders cannot ignore information that is or should be in their possession.

Additional Guidance on the January 28 Action

- **Rejection of Certain PdVSA Transfers Limited to GL 11 Authorized Transactions:** [GL 11](#) authorizes, with certain exceptions and through March 29, 2019, U.S. person employees of non-U.S. entities to engage in transactions and activities that are ordinarily incident and necessary to the maintenance or wind down of dealings involving PdVSA (or entities owned, directly or indirectly, 50 percent or more by PdVSA) that were in effect prior to January 28, 2019. A separate provision in GL 11 authorizes U.S. financial institutions to “reject, rather than block, funds transfers that involve both PdVSA or any entity owned, directly or indirectly, 50 percent or more by PdVSA and a non-U.S. entity located in a country other than the United States or Venezuela, provided that: (i) the funds transfers originate and terminate outside the United States; (ii) the originator and the beneficiary are non-U.S. persons; (iii) the funds are not destined for a blocked account on the books of a U.S. person; and (iv) the funds transfers otherwise are effected in accordance [with GL 11].” The revised guidance from OFAC clarifies that this “reject” authorization applies only to transactions otherwise authorized under GL 11, and does not extend to all transactions involving PdVSA and non-U.S., non-Venezuelan entities.
- **Wind-Down Period for Purchases of Venezuelan Petroleum:** Additional [FAQs](#) clarify that U.S. companies are permitted to purchase petroleum or petroleum products from PdVSA entities, so long as payments are made into a blocked, interest-bearing account in the United States until April 28. After this date, such transactions are prohibited without a license from OFAC.

What’s Ahead

The rapid changes to sanctions announced just days ago suggest that the Trump administration’s policy with respect to Venezuela remains subject to sudden change. Given the rapidly evolving situation in Venezuela, it would not be a surprise if additional measures are rolled out, or existing measures are tightened, in the coming days or weeks. Administration officials, and OFAC guidance, emphasize that U.S. sanctions relief will only occur if there is a transfer of control of PdVSA from the Maduro regime to Juan Guaidó, the opposition leader, or to a subsequent democratically elected government. We will continue to monitor developments and provide guidance as the regulatory landscape changes.

How Dechert Can Assist

U.S. sanctions are becoming increasingly nuanced and varied, and the regulatory and enforcement risks associated with economic sanctions, asset-freezing measures and trade embargoes continue to grow in scope and complexity. Any company or person engaging in business involving Venezuela, including holding Venezuelan debt, should be aware of the ongoing developments in the U.S. sanctions landscape and the attendant risks to transactions. With sanctions, trade and government relations experts in both Washington and London, Dechert is available to advise regarding the impact of these changes and those still to come.

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