

U.S. ECONOMIC SANCTIONS UPDATE: VENEZUELA



April 11, 2019

U.S. Venezuela Sanctions: Risk for Non-U.S. Persons

PdVSA is a Sanctions Target

We previously informed our clients that the United States had imposed new and additional sanctions against the Government of Venezuela by the designation of Petroleos De Venezuela S.A. (“PdVSA”) as a Specially Designated National (“SDN”).

On January 28, 2019 the U.S. designated PdVSA as an SDN and added it to the U.S. Specially Designated Nationals List (“SDN List”). The immediate effect of this action was that U.S. persons were generally prohibited from engaging in any transactions with PdVSA (subject to several general licenses) and all of PdVSA’s property and interests in property in the United States or within the possession or control of U.S. persons were blocked. These restrictions also applied to any entity 50% or more owned by PdVSA.

In addition to prohibiting U.S. persons from dealing or transacting with PdVSA (or with any entity it owns 50% or more), the relevant Executive Order provides for the imposition of sanctions against non-U.S. persons engaging in “sanctionable activity” with PdVSA.

Sanctions Risk for Non-U.S. Persons

Although the prohibitions flowing from the designation off PdVSA apply only to U.S. persons¹ or to transactions with a U.S. nexus, the relevant Executive Order pursuant to which PdVSA was designated

¹ The term United States person or U.S. person means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

provides the U.S. Treasury's Office of Foreign Assets Control ("OFAC") with the authority to designate non-U.S. persons that engage in certain (sanctionable) activity with PdVSA or with Venezuela in general as sanctions targets (equal to PdVSA). **The SDN designation tool of OFAC is a way by which the United States expands the application of unilateral U.S. sanctions and enforces sanctions against non-U.S. persons, i.e., persons outside or beyond the traditional, general *in personam* jurisdiction (reach) of the United States and U.S. law.**

While there are no specific prohibitions aimed at non-U.S. persons transacting business with PdVSA, there is the potential that non-U.S. persons could nevertheless be subject to sanctions either for operating in the Venezuelan oil sector, or for providing material assistance to or support for PdVSA. In an FAQ, OFAC has obliquely indicated 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.

Sanctionable Activity

Although non-U.S. persons may not engage in the activities prohibited to U.S. persons by or in connection with the designation of PdVSA, non-U.S. persons can be designated as SDNs (sanctions targets and be precluded from dealings with the United States and U.S. persons) if they engage in any of the following activities:

- (i) to operate in the gold sector of the Venezuelan economy or in any other sector of the Venezuelan economy (such as the oil sector);
- (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 (such as PdVSA).

OFAC has the Power to Designate non-U.S. Persons as SDNs

At this point, OFAC has not issued any precise guidance as to what constitutes sanctionable activity for non-U.S. persons with respect to PdVSA. However, for example, Members are informed that on April 5, 2019, OFAC announced that it designated two companies operating in the oil sector of the Venezuelan

economy as SDNs.² Additionally, in an example where strictly non-U.S. persons were involved, OFAC, in an action seemingly contrary to its earlier guidance, identified one vessel, which transported oil from Venezuela to Cuba.

From the statements of the U.S. State Department, it appears that OFAC most probably considers the purchase of petroleum products from, or the supply petroleum products to PdVSA by non-U.S. persons to be sanctionable, and that it will exercise its discretion as to whether it designates as an SDN a non-U.S. person involved in such transactions. Therefore, in light of OFAC's power to designate a non-U.S. person as an SDN and a sanctions target, caution should be exercised in all dealings with PdVSA and non-U.S. persons should ensure that there is no U.S. person involvement or other U.S. nexus in any dealings with PdVSA. Non-U.S. persons should also always be mindful of the other reasons OFAC can use (stated above) to designate SDNs.

Consequences of an entity's inclusion on the SDN List

An entity's inclusion on the SDN List, in effect a blacklist, drastically harms the reputation of a designated entity and usually means that even non-U.S. person banks, financial institutions, and other entities around the world will refrain from dealing with an SDN.

Questions and Further Guidance

The Eren Law Firm will continue to closely monitor developments with respect to the implementation of the U.S. sanctions against Venezuela and provide further guidance, as necessary.

For more information or questions regarding the subject covered in this *Economic Sanctions Update*, please contact:

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The Eren Law Firm is an economic sanctions boutique. Its other core areas of concentration and practice include corporate transactions, and international dispute resolution, anti-money laundering, and international trade regulation. The Firm's clients from around the world include banks and financial institutions; insurance, reinsurance and other financial services companies; natural resource extraction

² Despina Andrianna is a crude oil tanker (IMO: 9182667) that delivered crude oil from Venezuela to Cuba during February and March of 2019. Ballito Bay Shipping Incorporated is based in Monrovia, Liberia, and is the registered owner of the vessel, Despina Andrianna. ProPer In Management Incorporated is based in the port city of Piraeus, Athens, Greece, and is the operator of the vessel, Despina Andrianna.

companies, industrial companies, marine and air transportation companies, ship owners; sovereign governments; foreign state enterprises; individuals and persons on the SDN List.

Mr. Eren and Mr. Pinter of the Firm served in senior positions at the U.S. Treasury's Office of Foreign Assets Control (OFAC), the U.S. government agency that administers and enforces U.S. economic sanctions, for a combined 25 years prior to entering private law practice, respectively 22 and 20 years ago, and since this time, they have devoted and continue to devote most of their time in private practice to economic sanctions issues and matters, particularly those involving Iran, Russia and Venezuela. Mr. Pinter was OFAC's Chief of Licensing for 17 years during which time he was one of the chief arbiters of OFAC decisions. Mr. Eren's portfolio at Treasury mainly involved issues and matters involving Iran and the former Yugoslavia.

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