

Locke Lord QuickStudy: OFAC Issues Amended Venezuela-Related General License and FAQ Extending Delay of PdVSA 2020 8.5 Percent Bond Authorization?

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On January 17, 2023, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued Venezuela-related General License ("GL") 5J and amended FAQ 595.

GLs

GL 5J (replacing GL 5I) further delays the effective date of transactions related to, that provide financing for, or other dealings in the Petróleos de Venezuela, S.A. ("PdVSA") 2020 8.5 Percent Bond to on or after April 20, 2023, that are otherwise prohibited by Executive Order ("EO") 13835 ("Prohibiting Certain Additional Transactions With Respect to Venezuela"), as amended by EO 13857 ("Taking Additional Steps To Address the National Emergency With Respect to Venezuela"). GL 5I would have allowed such transactions on or after January 20, 2023. The delay is seen as a protective measure to prevent seizure of PdVSA assets by creditors.

FAQs

FAQ 595 – *"What does Venezuela-related General License 5J authorize?"* In sum, GL 5J further delays transactions in Petróleos de Venezuela, S.A. 2020 8.5 Percent Bond to on or After April 20, 2023.

Subsection 1(a)(iii) of EO 13835 prohibits U.S. persons from engaging in transactions related to the sale, transfer, assignment, or pledging as collateral by the Government of Venezuela ("GOV") of any equity interest in an entity owned 50% or more by the GOV. One effect of subsection 1(a)(iii) is to require authorization before U.S. persons may engage in certain transactions regarding any equity interest in an entity owned 50% or more by the GOV. Subsequent to the issuance of EO 13835, OFAC received inquiries about how and whether subsection 1(a)(iii) of EO 13835 could affect the ability to enforce bondholder rights to the CITGO shares serving as collateral for the Petróleos de Venezuela, S.A. ("PdVSA") 2020 8.5 Percent Bond. OFAC issued GL 5 on July 19, 2018, which removed EO 13835 as an obstacle to holders of the PdVSA 2020 8.5 Percent Bond gaining access to their collateral. OFAC issued GL 5J on January 17, 2023, which further delays the effectiveness of the authorization in GL 5 until April 20, 2023. Between October 24, 2019 and April 20, 2023 (the date the authorization in GL 5J becomes effective), there is no authorization in effect that licenses against subsection 1(a)(iii) of EO 13835 applicable to the holders of the PdVSA 2020 8.5 Percent Bond. As a result, during such period, transactions related to the sale or transfer of CITGO shares in connection with the PdVSA 2020 8.5 Percent Bond are

prohibited, *unless* specifically authorized by OFAC.

GL 5J prevents bondholders from making any attempt to seize assets from CITGO to recoup millions in outstanding debt they are owed. While previous OFAC GLs issued twelve-month extensions, GL 5J is only a three-month extension, which could be a sign of a shift in U.S. policy.

Conclusion

This paper is intended as a guide only and is not a substitute for specific legal or tax advice. Please reach out to the authors for any specific questions. We expect to continue to monitor the topics addressed in this paper and provide future client updates when useful.

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