

Locke Lord QuickStudy: The U.S. Moves to Normalize Relations With Venezuela by Suspending Certain VSR Sanctions Predicated on Agreement for Free Elections

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In light of the recent agreement on an electoral roadmap between Venezuela's Maduro regime and the Unitary Platform, and as a show of support for the Venezuelan people, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") on October 18, 2023, has taken significant steps to suspend for six months certain Venezuelan-related sanctions. This includes the issuance of three new General Licenses ("GL") (GLs 43, 44, and 45) and amendment of three existing GLs (GLs 3I, 5M, and 9H), reopening U.S. persons' ability to transact in Venezuela's oil and gas sector and gold sector, as well as removing the ban on secondary trading in certain Venezuelan government issued and Petróleos de Venezuela, S.A. ("PdVSA") issued bonds (while continuing the prohibition to seize collateral (CITGO shares) on defaulted PdVSA 8.5% Bonds).

OFAC has also introduced two new Venezuela-related FAQs (1136 and 1137), made modifications to four existing FAQs (595, 661, 662, and 629), and published a comprehensive document titled "Frequently Asked Questions Related to the Suspension of Certain U.S. Sanctions with Respect to Venezuela on October 18, 2023." OFAC is prepared to modify or cancel these authorizations at any time if the Maduro regime neglects to follow through on their commitments. As in past experience, OFAC may renew these sanctions suspensions or terminate certain sanctions if the Maduro regime and the Unitary Platform comply with the terms of the agreement. All remaining restrictions imposed by the U.S. on Venezuela will remain in place.

GLs

GL 3I, which replaces GL 3H, authorizes U.S. persons to engage in all transactions related to the provision of financing for, and other dealings in, Venezuelan government bonds specified in the annex to GL 3I ("GL 3I Bonds"), including the divestment or transfer of, or facilitation of divestment or transfer of, any holdings in GL 3I Bonds to a U.S. person. Unlike previous versions, GL 3I does not limit the divestment of holdings in GL 3I Bonds to non-U.S. persons. However, GL 3I does not authorize U.S. persons to sell, or to facilitate the sale of GL 3I Bonds, directly or indirectly, any person whose property and interest in property are blocked pursuant to the Venezuela Sanctions Regulations, 31 CFR part 591 (the "VSR").

GL 5M, which replaces GL 5L, further delays until on or after January 18, 2024, the ability of U.S. bondholders of PdVSA 2020 8.5% bonds ("PdVSA 8.5% Bonds") to enforce their rights to receive CITGO shares that serve as collateral for PdVSA 8.5% Bonds. Executive Order ("EO") 13835, as amended by EO 13857, initially prohibited

such actions to July 19, 2018. Subsequent OFAC GLs have incrementally extended the prohibition on enforcement of the PdVSA 8.5% Bonds to October 20, 2023. Under this updated GL 5M, U.S. persons remain restricted from participating in any transactions involving the sale or transfer of CITGO shares in connection with the PdVSA 8.5% Bonds until January 18, 2024, unless expressly authorized by OFAC.

GL 9H, which replaces GL 9G, authorizes transactions that are ordinarily incident and necessary to dealing in any debt of, or any equity in PdVSA or any entity in which PdVSA owns, directly or indirectly, a 50% or greater interest, issued prior to August 26, 2017 (together, "PdVSA Securities"), including the bonds specified in the annex to 9H, promissory notes and other receivables (together, "PdVSA Securities"). GL 9H now allows for involvement in activities associated with the receipt and processing of interest or principal payments, along with serving as a custodian for both U.S. and non-U.S. persons' holdings in PdVSA Securities. As of October 19, 2023, the divestment or transfer of PdVSA Securities is permitted to a U.S. person. This marks a significant change since U.S. persons are no longer constrained by previous requirements that such divestments be made only to non-U.S. persons. Additionally, GL 9H authorizes transactions that are typically incidental and necessary for facilitating, clearing, and settling transactions to divest PdVSA Securities, including those carried out on behalf of U.S. persons.

GL 43 authorizes transactions involving CVG Compania General de Minería de Venezuela CA ("Minerven"), or any entity that Minerven owns, directly or indirectly, 50% or greater interest.

GL 44 authorizes through April 18, 2024 all transactions involving PdVSA or any entity in which PdVSA owns, directly or indirectly, a 50% or greater interest (together, "PdVSA Entities"), that are related to oil and gas sector operations in Venezuela, including: (1) the production, lifting, sale, and exportation of oil or gas from Venezuela, and provision of related goods and services; (2) the payment of invoices for goods or services related to oil or gas sector operations in Venezuela; (3) new investment in oil or gas sector operations in Venezuela; and (4) delivery of oil and gas from Venezuela to creditors of the Venezuelan government, including creditors of PdVSA Entities, for debt repayment.

While transactions authorized under GL 44 are permitted to be processed through blocked banks Banco Central de Venezuela or Banco de Venezuela SA Banco Universal, transactions involving any other financial institutions blocked pursuant to EO 13850 are prohibited. GL 44 does not authorize: (1) the provision of goods or services to, or new investment in, an entity located in Venezuela that is owned or controlled by, or a joint venture with, an entity located in Russia; (2) any transactions related to new investment in oil or gas sector operations in Venezuela by a person located in Russia or any entity owned or controlled by a person located in Russia; (3) any debt transactions, such as the provision of loans to PdVSA, that are not for the payment of invoices or repayment of debt through delivery of oil or gas; (4) transactions prohibited by EO 13827 (related to certain virtual assets issued by, for, or on behalf of the Venezuelan government) or EO 13835 (related the debt that is owed to the Government of Venezuela, as well as certain transactions involving any equity interest in any entity in which the Government of Venezuela has a 50% or greater ownership interest); (5) the unblocking of any property blocked pursuant to the VSR; and (6) transactions involving any person blocked pursuant to a sanctions authority other than the VSR. All property blocked pursuant to the VSR in the U.S. or in possession or control of a U.S. person, as of October 18, 2023, must remain blocked unless separately authorized. Furthermore, OFAC stated that it will only renew this GL if the Maduro regime meets its commitments under the democratic electoral roadmap as well as other commitments with respect to those who are wrongfully detained.

GL 45 permits transactions related to bringing Venezuelan nationals back to Venezuela from non-U.S. jurisdictions in the Western Hemisphere and involving Consorcio Venezolano de Industrias Aeronauticas y Servicios Aereos, S.A. (“Consorcio”) and any entity in which Consorcio owns, directly or indirectly, a 50% or greater interest.

FAQs

FAQ 595 – GL 5M extends the postponement of the validity of the authorization in GL 5 until January 18, 2024. From October 24, 2019 to January 18, 2024, transactions related to the sale or transfer of CITOG shares linked to PdVSA 2020 8.5% Bonds are not authorized, unless specifically granted by OFAC. If any arrangement is made concerning proposals for the restricting or refinancing of payments owed to holders of PdVSA 2020 8.5% Bonds, additional licensing requirements may apply. OFAC encourages parties to apply for a specific license and is intended to adopt a favorable licensing policy for such an agreement.

FAQ 629 – OFAC aims to target corrupt actors in Venezuela’s gold and other specified sectors of the Venezuela economy under EO 13850, not those operating legitimately. This includes individuals engaged in deceitful practices or illicit activities, aiming to exploit Venezuelan resources for personal gain.

FAQ 661 – GL 9H permits individuals in the U.S. to participate in all transactions that are ordinarily incident and necessary to dealings in any PdVSA Securities issued before August 25, 2017. This encompasses bonds issued by PDV Holding, Inc. and CITGO Holding, Inc., along with any of their subsidiaries. GL 9H also allows for the selling of PdVSA Securities, including to other U.S. persons on or after October 18, 2023. Additionally, GL 9H authorizes all transactions that are ordinarily incident and necessary for facilitating, clearing, and settling trades of holdings in PdVSA Securities, provided these trades were initiated before 4:00 p.m. Eastern Standard Time on January 28, 2019.

FAQ 662 – GL 3I allows U.S. persons to participate in all transactions related to the financing for, and other dealings in GL 3I Bonds. It also permits all transactions that are typically necessary for facilitating, clearing, and settling trades of holdings in GL 3I Bonds, provided these trades were initiated before 4:00 p.m. Eastern Standard Time on February 1, 2019. Additionally, GL 3I permits all transactions related to the financing for, and other dealings in bonds that were issued prior to August 25, 2017, and were issued by U.S. person entities owned or controlled, directly or indirectly, by the Government of Venezuela, with the exception of PDV Holding, Inc., CITGO Holding, Inc., and any of their subsidiaries.

FAQ 1136 – U.S. persons are permitted to buy bonds issued by the Government of Venezuela or PdVSA before August 25, 2017, on the secondary market. With the implementation of GL 3I and 9H, U.S. persons are now exempt from the previous limitation that required the divestment of holdings in GL 3I Bonds or PdVSA Securities, exclusively to non-U.S. persons.

FAQ 1137 – For purposes of GL 45, the term “Western Hemisphere” refers to the countries and regions recognized by the U.S. Department of State on its website as constituting the Western Hemisphere.

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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