

October 25, 2023

Venezuela Sanctions Update

OFAC General Licenses and Guidance Broaden (Possibly Temporarily) Permitted Trading in Certain Securities and Transactions in the Venezuelan Energy and Gold Sectors, Contingent on Continued Steps Toward Democratic Elections

SUMMARY

On October 18, 2023, the Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued new and amended general licenses and guidance providing relief – which may be temporary – from certain U.S. economic sanctions targeting Venezuela. These measures (i) permit secondary trading of certain Venezuelan sovereign bonds and the debt and equity of *Petróleos de Venezuela, S.A.*, (ii) temporarily allow certain transactions involving the Venezuelan oil and gas sector and (iii) authorize transactions with the Venezuelan state-owned gold mining company, *Minerven*, including guidance clarifying that individuals and firms will not be targeted solely for operating in the Venezuelan gold sector. These actions will allow U.S. persons to participate in Venezuelan bond transactions, thus potentially bolstering the liquidity in the market; permit Venezuela to export oil and gas to the United States and other markets and provide limited relief from sanctions to individuals and entities operating in the Venezuelan gold sector. The licenses and guidance were issued after the signing of an electoral roadmap between Venezuela's Unitary Platform and representatives of Nicolás Maduro, and Treasury emphasized that continued relief will depend on Maduro's representatives' ongoing compliance with their commitments under the roadmap. These relief measures do not directly affect the majority of the Venezuela sanctions framework, and they do not alter the U.S. posture toward claims against the Government of Venezuela or state-owned entities.

BACKGROUND

Since 2015, in response to human rights violations and the erosion of democratic processes and institutions, the United States has maintained sanctions on Venezuela. Under former U.S. President Donald

Trump, OFAC issued additional and harsher sanctions in tandem with the Trump administration's declaration that Nicolás Maduro's re-election as President was illegitimate and its recognition of Juan Guaidó, the head of Venezuela's National Assembly, as the country's interim leader.¹ The U.S. sanctions regime targeting Venezuela currently includes a number of different prongs: (i) blocking the property of the Government of Venezuela, (ii) adding state-owned oil company Petróleos de Venezuela, S.A. ("PdVSA") to the U.S. list of Specially Designated Nationals and Blocked Persons, (iii) targeting the trading of certain Venezuelan sovereign bonds and PdVSA debt and equity securities in primary and secondary markets, (iv) imposing sectoral sanctions on Venezuela's gold sector, (v) targeting persons who engage in or are complicit in corruption involving Venezuelan government projects and programs, or who facilitate such activities and (vi) restricting transactions in or related to, among other things, any digital currency issued by, accounts receivable of, and pledges of collateral by, the Government of Venezuela.

THE SANCTIONS RELIEF MEASURES

On October 17, 2023, representatives of Maduro and the Unitary Platform, a group of Venezuelan opposition parties, agreed to an "electoral roadmap" described by the U.S. State Department as a "concrete step toward resolution of Venezuela's political, economic, and humanitarian crisis."² In recognition of this announcement, on October 18, 2023, OFAC provided limited and possibly temporary sanctions relief by issuing new and amended general licenses and providing new guidance that, among other things, permits trading in certain securities and expands the range of permitted activities in the energy and gold sectors of the Venezuelan economy (the "Sanctions Relief Measures"). Consistent with previous OFAC guidance related to Venezuela sanctions, the Sanctions Relief Measures will remove U.S. sanctions exposure for both U.S. and non-U.S. persons for actions that are within the scope of the relief.³ In its announcement, the Department of the Treasury emphasized that it would be prepared to amend or revoke the Sanctions Relief Measures "at any time, should representatives of Maduro fail to follow through on their commitments."⁴ The Department of State noted that it expects that, by the end of November, Venezuela will (i) "[d]efine a specific timeline and process for the expedited reinstatement of all candidates" for President and (ii) "[b]egin the release of all wrongfully detained U.S. nationals and Venezuelan political prisoners."⁵

A. Securities Trading Relief

General License ("GL") 3I and GL 9H remove the bans on the secondary trading (purchases or sales) of certain Venezuelan Government and PdVSA securities that were issued prior to the imposition of sanctions. GL 3I allows the divestment or transfer to U.S. persons of certain Venezuelan sovereign bonds listed in an annex to GL 3I (such bonds, "GL 3I Bonds").⁶ Previously, GL 3I Bonds could only be divested to non-U.S. persons. GL 3I Bonds include certain bonds issued by the Government of Venezuela and certain state-owned companies (such as steel company Siderúrgica del Turbio S.A. ("Sidetur")) issued prior to August 25, 2017 but exclude certain bonds solely held by the Government of Venezuela.⁷ GL 9H allows the divestment or transfer to U.S. persons of "debt (including the bonds listed on the Annex to this general license, promissory notes, and other receivables) of, or any equity in, [PdVSA] or any entity in which PdVSA

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owns, directly or indirectly, a 50 percent or greater interest, issued prior to August 25, 2017” (such securities, “PdVSA Securities”).⁸ Previously, PdVSA Securities could only be divested to non-U.S. persons.

Both general licenses permit the involvement of U.S. persons in activities incidental to transfers and divestments, including “engaging in transactions related to the receipt and processing of interest or principal payments, and acting as a custodian for U.S. and non-U.S. persons’ holdings in” GL 3I Bonds⁹ and PdVSA Securities.¹⁰ The Department of the Treasury assesses that the securities trading relief should “have the positive effect of displacing nefarious players in this market, and with negligible financial benefit to the Venezuelan regime.”¹¹

With respect to both GL 3I Bonds and PdVSA Securities, the restrictions on transactions directly with the Government of Venezuela or PdVSA or other blocked persons remain in place.

The restrictions on secondary trading of GL 3I Bonds and PdVSA Securities first imposed in 2019 resulted in a decline in U.S. investors’ ownership of such securities and a drop in the securities’ liquidity.¹² GL 3I and GL9H are likely to lead to an increase in liquidity and trading of both GL 3I Bonds and PdVSA Securities. At the same time, certain firms, including certain securities intermediaries, may remain cautious in dealing with such securities given the U.S. government’s emphasis on the temporary and contingent nature of the Sanctions Relief Measures.

The Sanctions Relief Measures do not immediately affect claims against the Government of Venezuela or state-owned companies. In its guidance, OFAC notes that the Sanctions Relief Measures do not affect “the U.S. government’s posture on litigation brought by creditors seeking to attach assets of the Government of Venezuela in the United States” (for which OFAC has previously released guidance).¹³ Similarly, in a call with journalists, a National Security Council official stated that the Sanctions Relief Measures “[do] not affect the judicial process related to the CITGO bankruptcy trial, nor [do they] impact the frozen assets of Venezuela in the United States or other jurisdictions.”¹⁴ With respect to claims related to CITGO brought by certain PdVSA creditors, OFAC issued GL 5M delaying the effective date for U.S. persons’ authorization “to enforce bondholder rights to the CITGO shares serving as collateral for the [PdVSA] 2020 8.5 percent bond” until on or after January 18, 2024.¹⁵ As a result, until January 18, 2024, “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.”¹⁶ Since October 24, 2019, OFAC has repeatedly pushed back the effective date of this general license. In an FAQ, OFAC notes that “[t]o the extent an agreement may be reached on proposals to restructure or refinance payments due to the holders of the PdVSA 2020 8.5 percent bond, additional licensing requirements may apply [and OFAC] would encourage parties to apply for a specific license and would have a favorable licensing policy toward such an agreement.”¹⁷

The U.S. posture regarding the CITGO creditor litigation thus appears unchanged for now. The U.S. District Court for the District of Delaware has set a January 22, 2024 deadline for submitting non-binding bids for

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CITGO and set a tentative sale hearing date for July 15, 2024.¹⁸ OFAC's decision on whether to renew GL 5M beyond January 18, 2024 may offer new insight into the United States' posture regarding this litigation.

B. Energy Sector Relief

GL 44 authorizes most transactions in the oil and gas sector in Venezuela, including those involving PdVSA and any entity in which PdVSA owns a 50 percent or greater interest.¹⁹ Specifically, GL 44 authorizes transactions until April 18, 2024—a six-month window. In guidance, OFAC noted that the “U.S. government intends to renew GL 44 only if the representatives of Maduro follow through with their commitments and take continued concrete steps toward a democratic election by the end of 2024.”²⁰ In a public statement accompanying the announcement of the Sanctions Relief Measures, Under Secretary of the Treasury Brian Nelson stated that renewal of GL 44 would also depend on compliance by representatives of Maduro with “other commitments with respect to those who are wrongfully detained.”²¹ GL 44 covers “most oil and gas sector operations in Venezuela, including the sale of oil and gas from Venezuela to the United States and other jurisdictions, as well as the payment of taxes, royalties, costs, fees, dividends, and profits related to oil and gas sector operations or transactions involving PdVSA.”²² GL 44 contains a non-exhaustive list of allowed transactions, including (i) the “[p]roduction, lifting, sale, and exportation of oil or gas from Venezuela, and provision of related goods and services,” (ii) the “[p]ayment of invoices for goods or services related to oil or gas sector operations in Venezuela,” (iii) “[n]ew investment in oil or gas sector operations in Venezuela” and (iv) “[d]elivery of oil and gas from Venezuela to creditors of the Government of Venezuela, including creditors of PdVSA Entities, for the purpose of debt repayment.”²³ OFAC's mention of allowing the delivery of oil and gas for the purpose of debt repayment may indicate U.S. willingness to facilitate the repayment or restructuring of Venezuelan debt obligations even as the United States does not change its posture toward the CITGO creditor litigation. GL 44 authorizes oil and gas sector transactions involving designated financial institutions Banco Central de Venezuela or Banco de Venezuela SA Banco Universal (“Banco de Venezuela”), but otherwise keeps in place the prohibition on transactions with blocked financial institutions.

GL 44 does not license certain transactions that might have been permitted under the terms of the license in the absence of specific exclusions, including (i) certain Russia-related transactions, to ensure that the GL does not undermine U.S. sanctions relating to Russia, including transactions involving 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 the Russian Federation, and transactions relating to new investment in oil or gas sector operations in Venezuela by a person located in the Russian Federation or any entity owned or controlled by a person located in the Russian Federation, (ii) new debt transactions²⁴ with PdVSA (such as loans) not specifically related to the payment of invoices or the repayment of debt through the delivery of oil and gas and (iii) transactions prohibited by U.S. sanctions on Venezuela targeting virtual assets, sovereign debt and equity interests in entities where the Government of Venezuela is a majority owner. GL 44 also does not authorize the unblocking of property blocked pursuant to Venezuela

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sanctions or transactions subject to other U.S. sanctions authorities or government restrictions, such as those imposed by the Department of Commerce Bureau of Industry and Security.

C. Gold Sector Relief

OFAC took two steps to provide relief related to its sanctions targeting the Venezuelan gold sector. First, OFAC released GL 43 authorizing all transactions involving state-owned ferrous metals mining company CVG Compania General de Minería de Venezuela CA (“Minerven”) or “any entity in which Minerven owns, directly or indirectly, a 50 percent or greater interest”²⁵ that are prohibited by Executive Order 13850 (as amended by Executive Order 13857), or Executive Order 13884, each as incorporated into the Venezuelan Sanctions Regulations. Minerven is currently the only entity designated for operating in the gold sector.²⁶ Like GL 44, GL 43 authorizes transactions with Minerven involving designated financial institutions Banco Central de Venezuela or Banco de Venezuela, but otherwise keeps in place the prohibition on transactions involving other blocked financial institutions. GL 43 does not relieve prohibitions under other Venezuela-related Executive Orders, including Executive Order 13808, which means that any transaction involving the sale of goods or services to Minerven by a U.S. person or that is otherwise subject to U.S. jurisdiction must have payment terms consistent with the 30-day “new debt” tenor restriction that applies to Government of Venezuela entities under Section 1(a)(ii) of that order.

Second, OFAC stated in guidance that “[g]iven recent positive steps taken towards competitive elections in Venezuela, [it] does not intend to target [with sanctions] any person solely for operating in the gold sector of the Venezuelan economy.”²⁷ OFAC noted that such a policy would depend on “continued concrete steps toward a democratic solution in Venezuela.”²⁸ The Department of the Treasury assesses that these measures will “have the effect of reducing black-market trading in gold.”²⁹

D. Other Relief

OFAC also issued GL 45 authorizing transactions that would otherwise be prohibited by Executive Order 13850 (as amended by Executive Order 13857), or Executive Order 13884, each as incorporated into the Venezuelan Sanctions Regulations, related to “the repatriation of Venezuelan nationals from non-U.S. jurisdictions in the Western Hemisphere to Venezuela, and [that] are exclusively for the purposes of such repatriation, involving Consorcio Venezolano de Industrias Aeronáuticas y Servicios Aéreos S.A. (“Conviasa”), or any entity in which Conviasa owns, directly or indirectly, a 50 percent or greater interest.”³⁰

POLICY IMPLICATIONS

The Sanctions Relief Measures reflect two primary policy points:

First, the relief provided by the Sanctions Relief Measures is narrowly scoped. Both the carve-outs in the general licenses and the related guidance make clear that, except for the specifically granted relief, “all other sanctions prohibitions imposed by the United States with respect to Venezuela, including on the Government of Venezuela, remain in place.”³¹ The general blocking of the property of the Government of

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Venezuela as well as prohibitions on dealings with most designated financial institutions have not been affected by the Sanctions Relief Measures. As a result, the Sanctions Relief Measures leave unaddressed questions about the future of important Venezuelan assets such as CITGO as well as reintegration of the Venezuelan economy with the U.S. economy.

Second, the Department of the Treasury and the Department of State emphasized the potentially time-limited and contingent nature of the sanctions relief. The Department of State stated that it expects the reinstatement of all candidates for President and the beginning of the release of U.S. nationals and political prisoners by the end of November. The willingness of representatives of Maduro to follow through on their commitments and the U.S. government's approach to maintaining sanctions relief in response to follow-through by representatives of Maduro—or lack thereof—should become apparent in the coming weeks.

Ongoing monitoring of democratic developments in Venezuela will be especially important with respect to the Sanctions Relief Measures related to the oil and gas industry, as these measures will automatically sunset on April 18, 2024 unless expressly renewed by OFAC. This means that such measures are particularly likely to be reversed if progress toward democratic liberalization stalls.

Given the limited and contingent scope of the Sanctions Relief Measures, the Sanctions Relief Measures are most likely to affect short-term or one-time transactions (such as trading) rather than long-term, sustained investments.

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ENDNOTES

- 1 See S&C Client Memorandum: “Venezuela Sanctions Update” (Feb. 5, 2019), *available at* <https://scweb.law.sullcrom.com/clientmemodocs/GPM7783.pdf>.
- 2 Department of State, Press Statement, Signing of Electoral Roadmap Between the Unitary Platform and Representatives of Maduro (Oct. 18, 2023), *available at* <https://www.state.gov/signing-of-electoral-roadmap-between-the-unitary-platform-and-representatives-of-maduro/> (the “State Department Statement”).
- 3 FAQ 1099, *available at* <https://ofac.treasury.gov/faqs/1099>.
- 4 Department of the Treasury, Press Release, In Response to Electoral Roadmap, Treasury Issues New Venezuela General Licenses (Oct. 18, 2023), *available at* <https://home.treasury.gov/news/press-releases/jy1822> (the “Treasury Statement”).
- 5 State Department Statement.
- 6 General License 3I – Authorizing Transactions Related to, Provision of Financing for, and Other Dealings in Certain Bonds, *available at* <https://ofac.treasury.gov/media/932211/download?inline> (hereinafter “GL 3I”).
- 7 FAQ 523 notes that Venezuela Government International Bond issued on December 29, 2016 (ISIN USP97475AQ39, CUSIP AM1108092) is not included in the GL 3I list because “available information indicates that the Government of Venezuela is both the bond’s issuer and sole holder” and that it is the “only bond [that OFAC has] identified and purposely omitted” from the annex. FAQ 523, *available at* <https://ofac.treasury.gov/faqs/523>.
- 8 General License 9H – Authorizing Transactions Related to Dealings in Certain Securities, *available at* <https://ofac.treasury.gov/media/932221/download?inline> (hereinafter “GL 9H”).
- 9 FAQ 662, *available at* <https://ofac.treasury.gov/faqs/662>.
- 10 FAQ 661, *available at* <https://ofac.treasury.gov/faqs/661>.
- 11 Treasury Statement.
- 12 Venezuelan creditors say gov’t-opposition deal helpful for debt restructuring, *Reuters* (Oct. 24, 2023), *available at* <https://www.reuters.com/markets/venezuelan-creditors-say-govt-opposition-deal-helpful-debt-restructuring-2023-10-23/>.
- 13 Frequently Asked Questions Related to the Suspension of Certain U.S. Sanctions with Respect to Venezuela on October 18, 2023 (Oct. 18, 2023), *available at* <https://ofac.treasury.gov/media/932241/download?inline> (the “Sanctions Relief FAQs”); FAQ 808, *available at* <https://ofac.treasury.gov/faqs/808>; FAQ 1123, *available at* <https://ofac.treasury.gov/faqs/1123>; FAQ 1124, *available at* <https://ofac.treasury.gov/faqs/1124>.
- 14 Department of State, Teleconference with Senior Administration Officials on Venezuela (Oct. 18, 2023), *available at* <https://www.state.gov/senior-administration-officials-on-venezuela/>.
- 15 General License 5M – Authorizing Certain Transactions Related to the Petróleos de Venezuela, S.A. 2020 8.5 Percent Bond on or After January 18, 2024, *available at* <https://ofac.treasury.gov/media/932216/download?inline> (hereinafter “GL 5M”).
- 16 FAQ 595, *available at* <https://ofac.treasury.gov/faqs/595>.
- 17 FAQ 595.
- 18 Special Master’s Status Report Regarding Marketing Process Deadlines at 2, *Crystallex Int’l Corp. v. Bolivarian Republic of Venezuela*, 17-mc-00151 (D. Del. Oct. 23, 2023), ECF No. 771, Marianna Parraga, Delaware court will not seek to set minimum price in Citgo auction, *Reuters* (Oct. 23, 2023), *available at* <https://www.reuters.com/markets/deals/delaware-court-will-not-seek-stalking-horse-bid-citgo-auction-2023-10-23/>.

ENDNOTES (CONTINUED)

- 19 General License 44 – Authorizing Transactions Related to Oil or Gas Sector Operations in Venezuela, *available at* <https://ofac.treasury.gov/media/932231/download?inline> (hereinafter “GL 44”).
- 20 Sanctions Relief FAQs.
- 21 Department of the Treasury, Press Release, In Response to Electoral Roadmap, Treasury Issues New Venezuela General Licenses (Oct. 18, 2023), *available at* <https://home.treasury.gov/news/press-releases/jy1822>.
- 22 *Id.*
- 23 *Id.*
- 24 The prohibitions on “new debt” include “all transactions involving debt issued on or after August 25, 2017, with a maturity of longer than 90 days; all financing in support of such new debt; and any dealing in, including provision of services in support of, such new debt.” FAQ 511, *available at* <https://ofac.treasury.gov/faqs/511>; FAQ 553, *available at* <https://ofac.treasury.gov/faqs/553>.
- 25 General License 43 – Authorizing Transactions Involving CVG Compania General de Minería de Venezuela CA, *available at* <https://ofac.treasury.gov/media/932226/download?inline> (hereinafter “GL 43”).
- 26 Department of the Treasury, Treasury Sanctions Venezuela’s State Gold Mining Company and its President for Propping Up Illegitimate Maduro Regime (Mar. 19, 2019), *available at* <https://home.treasury.gov/news/press-releases/sm631#:~:text=Washington%20%E2%80%93%20Today%2C%20the%20U.S.%20Department,the%20illicit%20gold%20operations%20that>.
- 27 Sanctions Relief FAQs.
- 28 *Id.*
- 29 Treasury Statement.
- 30 General License 45 – Authorizing Certain Repatriation Transactions Involving Consorcio Venezolano de Industrias Aeronáuticas y Servicios Aéreos, S.A., *available at* <https://ofac.treasury.gov/media/932236/download?inline> (hereinafter “GL 45”).
- 31 Sanctions Relief FAQs.

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