

Venepandi's Circular - 043 – Update on the U.S. Sanctions against Venezuela. Advice to all parties.

Given the recent executive orders issued by the US government and the UE sanctions against the government and Venezuelan individuals, we've updated our circular 040 to explain the matter in detail.

On 2015, president Obama issued the executive order N°13692 placing sanctions on a number of persons which were public officials at that time, but not to any public company. On the other hand, president Trump has issued 4 executive orders (EO 13808 - august 2017, EO 13827 – February 2018, EO 13835 – May 2018 and EO NXX– November 2018) these times against public Venezuelan entities involving any "US persons". These executive orders operates under the Kingpin act with it list of persons and companies and with the lists of the OFAC (Office of Foreign Assets Control) known as SDL (special designated persons).

EO 13808 (enforced since August 25th 2017 at 00:01 hrs), forbade: a) any operation, transaction or financing related to the issuance of new debt if the debtor is the Venezuelan government, b) issuance and joint operations with credits and; c) bonds issuance after August 25th, 2017. For the purpose of understanding the extend of the E.O.: 1) Venezuelan government means any entity, public or private where the government has a relevant participation (the republic, states, municipalities, PDVSA, central bank, etc) while 2) US person means US national and US companies but also branches of companies located in the US and any other person located in the US territory.

The exception of the above are: a) any new debts which would be paid in less than 90 days, b) medicines, medical and surgical equipment and food; c) legal fees of any lawyers representing the Venezuelan government

EO 13827 establishes that any operation involving criptocurrency (Petro) falls under the sanctions also and EO 13835 restrict even further the operations as any sell off assets or bailment of assets is also prohibited. Last week, November 1st, president Trump issued a new EO involving any operation with Venezuelan gold.

Frequently asked question no. 511 posted on the website of the Office of Foreign Assets Controls (OFAC), the principal US sanctions regulator, provides: The term debt includes bonds, loans, extensions of credit, loan guarantees, letters of credit, drafts, bankers acceptances, discount notes or bills, or commercial paper. Accordingly, in relevant part:

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The P&I Correspondent in Venezuela

Caracas, April 13th 2018

1) Executive Order 13808 prohibits transactions by US Persons or within the US that relate to dealing in debt - meaning bonds, loans, extensions of credit, loan guarantees, letters of credit, drafts, bankers acceptances, discount notes or bills, or commercial paper - of PDVSA if such debt has a maturity of longer than 90 days; and

2) Executive Order 13835 prohibits transactions by US Persons or within the US that relate to the purchase of debt from PDVSA, debt owed to PDVSA that is pledged as collateral, and the sale, transfer, assignment or pledging as collateral by PDVSA of any equity interest in an entity in which PDVSA has a 50% or greater interest.

Responses to the Queries

(1) Is it permissible to settle a claim in tort against PDVSA?

As a settlement payment by or on behalf of the vessel to PDVSA for damage allegedly caused by the vessel to the PDVSA pier, (a) would not relate to dealing in debt - meaning bonds, loans, extensions of credit, loan guarantees, letters of credit, drafts, bankers acceptances, discount notes or bills, or commercial paper - of PDVSA, the prohibitions in Executive Order 13808 would not apply, and (b) would not relate to the purchase of debt from PDVSA, debt owed to PDVSA pledged as collateral, or the sale, transfer, assignment or pledging of collateral by PDVSA of any equity interest, the prohibitions of Executive Order 13835 would not apply.

Accordingly, I see no basis for US sanctions exposure from making the settlement payment to PDVSA, whether by US Persons, from within the US, or otherwise.

(2) Is it permissible to pay them the settlement amount direct?

See foregoing response. If the settlement payment were made to a party other than PDVSA - such as to a contractor - US sanctions exposure could arise if such party is designated on, or is owned 50% or more by a person designated on, the US list of Specially Designated Nationals (the SDN List).

(3) If not would the position change if the payment is direct to an independent private contractor who repairs the PDVSA installation?

See foregoing response..

(4) Can the client instead of a commitment to contract with the independent contractor bind itself to pay the contractor on PDVSA's behalf in a repair contract entered directly between the former and the latter?

I also see no US sanctions exposure arising from the client agreeing to pay the contractor on PDVSA's behalf under a repair contract, provided that the contractor is not is designated on or owned 50% or more by a person designated on the SDN List.

In conclusion, US sanctions applicable to dealing with PDVSA are of a limited nature, and apply only to US Persons and transactions that take place in the US. Insofar as the Canda/EU sanctions, they have essentially replicated those of the US.

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As a final point to note, although the government is trying to put their “criptocurrency” in service and for all parties dealing business in Venezuela to use the Petros for all transactions, we’ve learned locally that there’s strong resistance against this (especially from members of the government), mainly due the difficulty which represents adding an additional lawyer of exchange by passing through the Petro system and also the sanctions imposed by the US government. Venezuela is 99% depending on the shipping industry and the government is, simultaneously, avoiding any action that could jeopardize the export of oil and/or import of all products including food.

Up to the date of this circular’s issuance, the INEA continues to charge for their services and taxes in USD in accordance to the following rules for each service (http://www.inea.gob.ve/marco/pdf/1legislacion_nacional/5Resoluciones/Resolucion_076_Tarifas_de_las_Actividades_Conexas_del_Sector_Acuatico.pdf).

Please let us know should you have any further specific question about any local topic. Additionally, please remember to credit our company in case you chose to share this information.

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