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U.S. Department of the Treasury's Office of Foreign Assets Control Revokes General License 44 Related to Venezuela's Oil and Gas Sector

*By Andres Fernandez, Gabriel Caballero Jr., Jonathan M. Epstein, Ronald A. Oleynik, Andrew K. McAllister, Antonia I. Tzinova, Daniel A. Noste and Catherine Yepes**

In this article, the authors discuss key components of General License 44A, issued recently by the U.S. Department of the Treasury's Office of Foreign Assets Control, including the temporary authorization to wind down transactions related to oil or gas sector operations in Venezuela that were previously authorized under GL 44, as well as transactions involving Petróleos de Venezuela S.A. that continue to be permissible under the Venezuela Sanctions Regulations.

The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) has issued General License 44A (GL 44A), replacing and superseding General License 44 (GL 44).

On October 18, 2023, OFAC suspended certain sanctions measures on Venezuela's oil and gas sector operations, including transactions involving Petróleos de Venezuela S.A. (PDVSA), through the issuance of GL 44 due to the announcement of a political agreement between representatives of Venezuelan President Nicolás Maduro and the opposition. At the same time, OFAC cautioned that it would not renew GL 44 if Maduro's representatives failed to take concrete steps toward a democratic election.

According to the U.S. government, Maduro and his representatives have not fully met their commitments to support the peaceful restoration of democracy, competitive elections, and the rights and freedoms of the Venezuelan people.

This article discusses key components of GL 44A, including the temporary authorization to wind down transactions that were previously authorized under GL 44, as well as transactions involving PDVSA that continue to be permissible under the Venezuela Sanctions Regulations (VSR).

WHAT IS AUTHORIZED UNDER GL 44A?

GL 44A authorizes all transactions prohibited by the VSR that are ordinarily incident and necessary to the wind down of transactions related to oil or gas

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sector operations in Venezuela that were previously authorized by GL 44 through 12:01 a.m. EDT on May 31, 2024. More specifically, GL 44A authorizes the wind down of, among others, the following non-exhaustive list of transactions that were previously authorized by GL 44:

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; and
3. The delivery of oil and gas from Venezuela to creditors of the government of Venezuela, including creditors of entities in which PDVSA owns, directly or indirectly, a 50 percent or greater interest, for the purpose of debt repayment.

Essentially, OFAC issued GL 44A to implement an orderly process for wind-down transactions that had been previously authorized and were being conducted pursuant to GL 44. Notably, OFAC clarified that entering into new business, including new investments (which was previously authorized under GL 44), will not be considered a wind-down transaction.

GL 44A continues to prohibit transactions involving blocked financial institutions other than transactions with Banco Central de Venezuela and Banco de Venezuela SA Banco Universal.

As related to the Russian Harmful Foreign Activities Sanctions, GL 44A continues to prohibit (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 the Russian Federation, and (2) any transactions related 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

GL 44A also continues to forbid transactions prohibited by Subsections 1(a)(i)-(iii) or 1(b) of Executive Order (E.O.) 13808. Additionally, any transactions prohibited by E.O. 13827 or E.O. 13835 remain prohibited, and GL 44A does not authorize the unblocking of any property blocked pursuant to the VSR.

Transactions that seek to rely on GL 44A will require a case-by-case evaluation.

WHAT IF A COMPANY CANNOT WIND DOWN TRANSACTIONS BY MAY 31, 2024?

U.S. and non-U.S. persons (including those who relied on GL 44 to (1) do business in or with the Venezuelan oil and gas sector, or (2) address the

repayment of certain debts owed by the government of Venezuela) who are unable to wind down certain transactions before May 31, 2024, will need to evaluate whether a specific license will be necessary. OFAC has indicated it will consider specific license requests on a case-by-case basis for those seeking to engage in transactions that were previously authorized under GL 44 (e.g., new investments in the oil or gas sector in Venezuela).

ARE TRANSACTIONS INVOLVING PDVSA PROHIBITED IN LIGHT OF OFAC'S RECENT ACTIONS?

On January 28, 2019, OFAC designated PDVSA for operating within Venezuela's oil sector pursuant to E.O. 13850. Since then, OFAC has issued general licenses that authorize certain otherwise prohibited activity with PDVSA. While OFAC decided not to renew GL 44, OFAC has clarified that previous authorizations related to the oil or gas sector in Venezuela – such as General License 8M, General License 41 and General License 10A – remain effective until otherwise amended or revoked by OFAC.

FUTURE ISSUANCES

The U.S. government has indicated that Maduro and his representatives have prevented the democratic opposition from registering the candidate of their choice for the upcoming election. It appears Maduro's representatives have intimidated political opponents and detained political actors and civilians. OFAC will therefore continue to assess sanctions based on the actions of Maduro and his representatives. Further developments are expected as the July 2024 Venezuelan election approaches.

On the other hand, public and private statements made by U.S. policy officials note that GL 44A specific license requests will be reviewed on a case-by-case basis. Officials further note that the situation with Venezuela is delicate for a number of geopolitical reasons, and that the Biden Administration does not wish to return to the "maximum pressure" policy of the past. We take this to mean that specific license requests will be seriously considered, and that the U.S. government will continue a "carrot and stick" approach to Venezuela as the country moves toward its July 27, 2024, national elections.

IN SUMMARY

- OFAC has issued GL 44A, replacing and superseding GL 44, which authorized certain transactions related to oil or gas sector operations in Venezuela, including transactions involving PDVSA.
- According to the U.S. government, Venezuelan President Maduro and his representatives have not fully met their commitments to support the

peaceful restoration of democracy, competitive elections, and the rights and freedoms of the Venezuelan people.