



APRIL 12, 2019

CIRCULAR NO. 12/19

TO MEMBERS OF THE ASSOCIATION

Dear Member:

**US SANCTIONS ON VENEZUELA: RISKS FOR NON-US PERSONS CONCERNING TRANSACTIONS WITH PDVSA**

In [Circular No. 04/19](#) of February 6, 2019, Members were informed that the United States had imposed new and additional sanctions on the Government of Venezuela through the designation of Petroleos De Venezuela SA (PdVSA) as a Specially Designated National (SDN).

On January 28, 2019 the US designated PdVSA as an SDN and added it to the US SDN List. The immediate effect of this action was that US persons were generally prohibited from engaging in any transactions with PdVSA (subject to several general licenses) and that all of PdVSA's property, and interests in property, in the United States or within the possession or control of US persons were blocked. These restrictions also applied to any entity 50% or more owned by PdVSA.

In addition to prohibiting US persons from dealing or transacting with PdVSA (or with any entity of which it owns 50% or more), the relevant Executive Order provides for the imposition of sanctions against non-US persons engaging in "sanctionable activity" with PdVSA.

**Sanctions risks for non-US persons**

Although the prohibitions flowing from the designation of PdVSA apply only to US persons<sup>1</sup> or to transactions with a US nexus, the relevant Executive Order pursuant to which PdVSA was designated provides the US Treasury's Office of Foreign Assets Control (OFAC) with the authority to designate non-US persons that engage in certain (sanctionable) activity with PdVSA, or with Venezuela in general, as sanctions targets (*i.e.*, on a par with PdVSA). The SDN designation tool of OFAC is a way by which the United States expands the application of unilateral US sanctions and enforces sanctions against non-US persons, *i.e.*, persons outside or beyond the traditional, general *in personam* jurisdiction (or reach) of the United States and US law.

While there are no specific prohibitions aimed at non-US persons transacting business with PdVSA, there is the potential that non-US persons could nevertheless be subject to sanctions either for operating in the Venezuelan oil sector, or for providing material assistance to, or support for, PdVSA. In an FAQ, OFAC has obliquely indicated that a non-US person could continue to purchase petroleum and petroleum products from PdVSA, as long as there was no US nexus.

<sup>1</sup> The term United States person or US person means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

## Sanctionable activity

Although non-US persons may not engage in the activities prohibited to US persons by or in connection with the designation of PdVSA, non-US persons can be designated as SDNs (sanctions targets precluded from dealings with the United States and US persons) if they engage in any of the following activities:

- (i) operating in the gold sector of the Venezuelan economy or in any other sector of the Venezuelan economy (such as the oil sector);
- (ii) being responsible for or complicit in, or to have directly or indirectly engaged in, any transaction or series of transactions involving deceptive practices work and corruption and the Government of Venezuela or projects or programs administered by the Government of Venezuela, or to be an immediate adult family member of such person;
- (iii) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any activity or transaction described in subsection (i) of this section, or any person whose property and interests in property are blocked pursuant to this order (such as PdVSA).

## OFAC has the power to designate non-US persons as SDNs

At this point, OFAC has not issued any precise guidance as to what constitutes sanctionable activity for non-US persons with respect to PdVSA. However, for example, Members should be aware that on April 5, 2019, OFAC announced that it had designated two companies operating in the oil sector of the Venezuelan economy as SDNs.<sup>2</sup> Additionally, in an example where strictly non-US persons were involved, OFAC, in an action seemingly contrary to its earlier guidance, identified one vessel, which transported oil from Venezuela to Cuba.

From the statements of the US State Department, it appears that OFAC most probably considers the purchase of petroleum products from, or the supply petroleum products to, PdVSA by non-US persons to be sanctionable, and that it will exercise its discretion as to whether it designates as an SDN a non-US person involved in such transactions.

Therefore, in light of OFAC's power to designate a non-US person as an SDN and a sanctions target, caution should be exercised in all dealings with PdVSA, and non-US persons should ensure that there is no US person involvement or other US nexus in any dealings with PdVSA. Non-US persons should also always be mindful of the other reasons OFAC can use (stated above) to designate SDNs.

## Consequences of an entity's inclusion on the SDN List

An entity's inclusion on the SDN List, in effect a blacklist, drastically harms the reputation of a designated entity and usually means that even non-US person banks, financial institutions, and other entities around the world will refrain from dealing with an SDN.

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<sup>2</sup> Despina Andrianna is a crude oil tanker (IMO: 9182667) that delivered crude oil from Venezuela to Cuba during February and March of 2019. Ballito Bay Shipping Incorporated is based in Monrovia, Liberia, and is the registered owner of the vessel, Despina Andrianna. ProPer In Management Incorporated is based in the port city of Piraeus, Athens, Greece, and is the operator of the vessel, Despina Andrianna.



## Questions and guidance

Your Managers will keep abreast of developments regarding the implementation of US sanctions against Venezuela, and inform Members of developments of significance. Members are reminded that, pursuant to American Club rules, there is no cover for voyages where the extension of cover would violate or pose a risk of violating sanctions prohibitions under US law, and also that causing a violation could entail the imposition of sanctions or penalties on the person causing the violation. Members are accordingly reminded to conduct additional sanctions due diligence to ensure their own and the American Club's compliance with relevant prohibitions.

Should Members wish to discuss any questions or need additional guidance regarding any aspect of the foregoing or other sanctions in general, or for confirmations as to the availability of cover for voyages involving countries (Iran, Syria, Cuba, North Korea, Russia, the Crimea region of Ukraine, Venezuela, or entities or individuals subject to US economic sanctions (designated entities and individuals appearing on the OFAC SDN List, e.g., certain Russian entities), they are invited to contact: Charles J. Cuccia, Senior Vice President - Compliance, ph +1 212 847 4539, mob +1 917 215 2883, [charles.cuccia@americanclub.com](mailto:charles.cuccia@americanclub.com).

Yours faithfully,

Joseph E.M. Hughes, Chairman & CEO  
Shipowners Claims Bureau, Inc., Managers for  
**THE AMERICAN CLUB**