

# Lawyer Insights

February 15, 2019

## How Newly Broadened Venezuela Sanctions Affect Securities

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Published in Law360



On Monday, Feb. 11, 2019, following the addition of *Petróleos de Venezuela SA* to the Specially Designated Nationals and Blocked Persons List, the U.S. Treasury Department's Office of Foreign Assets Control amended two of the general licenses that authorize activities otherwise prohibited by U.S. sanctions toward Venezuela — one related to dealings in certain bonds, and the other to dealings in certain securities.

The amendments to the two GLs scale back authorizations for the purchase of or investment in (or facilitation thereof) certain bonds issued by the government of Venezuela, extend the wind-down period by about nine days in respect of certain authorizations and ultimately work to expand the scope of sanctions as to PDVSA-related securities.

OFAC continued its trend of broadening the scope of U.S. sanctions on Venezuela, this time specifically by limiting the authorizations previously granted by GLs as to dealings in certain bonds and securities. Taken together, the limitations on the authorizations previously granted by the GLs seek to not only restrict the sale by U.S. persons of certain Venezuelan bonds and equity, but also restrict the ability of non-U.S. persons to avail themselves of the U.S. financial system to transact in such Venezuelan bonds and equity.

### The Full Story

On Feb. 11, OFAC revised and reissued GL 3B, "Authorizing Transactions Related to, Provisions of Financing for, and Other Dealings in Certain Bonds," and GL 9A, "Authorizing Transactions Related to Dealings in Certain Securities" — relabeling them GL 3C and GL 9B, respectively — and revised three related and existing frequently asked questions documents.

GL 3C and GL 9B are part of 14 GLs authorizing activities that would otherwise be prohibited following the Jan. 28, 2019, addition of PDVSA to the SDN list pursuant to Executive Order 13850 for operating in the oil sector of the Venezuelan economy.

### General License 3C

Like its predecessor (GL 3B, issued Feb. 1, 2019), GL 3C authorizes:

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- Transactions related to, the provision of financing for and other dealings in certain bonds listed in the annex therein (the GL 3C bonds), provided that any divestment or transfer of, or facilitation of divestment or transfer of, any holdings in such bonds be to a non-U.S. person;
- Certain transactions incident and necessary to facilitating, clearing and settling trades of holdings in GL 3C bonds, provided such trades were placed prior to Feb. 1, 2019, (4:00 pm EST);
- Certain transactions incident and necessary to the winding down of financial contracts or other agreements entered into prior to Feb. 1, 2019, involving GL 3C bonds, until the end of the specified wind-down period; and
- Transactions related to, the provision of financing for and other dealings in bonds that were issued both (1) prior to Aug. 25, 2017, and (2) by U.S. person entities owned or controlled, directly or indirectly, by the government of Venezuela, other than Nynas AB, PDV Holding Inc., CITGO Holding Inc. and any of their subsidiaries.

However, GL 3C amends its predecessor by limiting the authorization for transactions related to the GL 3C bonds to exclude the purchase of or investment in, or the facilitation of the purchase of or investment in, bonds issued by the government of Venezuela prior to Aug. 25, 2017 (including the GL 3C bonds), other than purchases of or investments in GL 3C bonds that are ordinarily incident and necessary to the divestment or transfer of holdings in GL 3C bonds.

GL 3C also amends its predecessor by extending the authorized wind-down period to March 11, 2019 (instead of March 3).

### ***General License 9B***

With certain exceptions provided in section (f) and (g) therein (some of which are described below), GL 9B, like its predecessor (GL 9A, issued Feb. 1, 2019), authorizes:

- Transactions that are ordinarily incident and necessary to dealings in any debt (including the bonds listed in the annex therein, promissory notes and other receivables) of, or any equity in, PDVSA or an entity in which PDVSA owns 50 percent or greater interest, issued prior to Aug. 25, 2017, provided that any divestment or transfer of, or facilitation of divestment or transfer of, any holdings in such PDVSA securities must be to a non-U.S. person;
- Certain transactions incident and necessary to facilitating, clearing and settling trades of holdings in PDVSA securities placed before Jan. 28, 2019 (4:00 pm EST);
- Certain transactions incident and necessary to the winding down of financial contracts or other agreements entered into prior to Jan. 28, 2019, involving or linked to PDVSA securities, until the end of a specified wind-down period; and
- Certain transactions incident and necessary to dealings in any bonds issued prior to Aug. 25, 2017, by PDVH, CITGO Holdings Inc. and Nynas AB and their subsidiaries.

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However, GL 9B amends its predecessor by extending the authorized wind-down period described above to March 11, 2019 (instead of March 3). It also expands the exceptions to the aforementioned authorizations as follows: It adds that — in addition to GL 9B not authorizing U.S. persons to sell PDVSA securities to any person whose property and interest in the property are blocked pursuant to the executive order, or to any entity in which PDVSA owns a 50 percent or greater interest — GL 9B also does not authorize any U.S. persons to facilitate the sale of PDVSA securities in such manners.

This amendment appears to target brokers and other parties that would purport to arrange (that is, facilitate) transactions between certain PDVSA securities holders, on the one hand, and blocked individuals (such as PDVSA itself, for example), on the other hand, thereby making a repurchase of such PDVSA securities by their respective issuer very difficult for holders of such PDVSA securities that would clear such transactions through the U.S. financial system, even if such holders are not U.S. persons themselves.

The amended FAQs 650, 661 and 662 provide guidance on compliance with GL 3C and 9B, including information as to the appropriate level of diligence required of U.S. persons on their direct customers, and the requirements in respect of transactions that involve U.S. persons or the U.S. financial system. Importantly, FAQ 650 clarifies that financial institutions or registered broker-dealers in securities may rely upon the information ordinarily available to them for purposes of conducting the activities authorized under GL 3C and 9B.

Overall, the GLs and FAQs taken together provide that U.S. persons may continue to hold their interests in the PDVSA securities identified in the GLs, but are subject to certain restrictions on the sale of those interests in the secondary market. Moreover, while non-U.S. persons may continue to deal in such identified PDVSA securities, to the extent transactions involve U.S. persons or the U.S. financial system, such transactions must comply with the terms of the GLs, and will therefore be limited, even if the ultimate securities holder is not a U.S. person.

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