

CLIENT ALERT

# New Opportunities in Venezuela? Key Takeaways from OFAC's October 2023 General Licenses

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On October 18, 2023, the Office of Foreign Assets Control ("**OFAC**") issued six general licenses ("**GLs**") authorizing certain business activity in Venezuela following a political agreement between the Maduro regime and the Unitary Platform, a coalition of opposition groups, regarding the 2024 Venezuelan election.<sup>1</sup> The United States has suggested that the continuation of several of the licenses discussed below will be contingent on lifting the electoral ban by November and further steps toward free elections in the coming year.<sup>2</sup>

The new licenses broadly fall into three categories:

- First, GL 44<sup>3</sup> lifts restrictions on U.S. persons' involvement in the Venezuelan oil and gas industry.

<sup>1</sup> *In Response to Electoral Roadmap, Treasury Issues New Venezuela General Licenses*, OFAC (Oct. 18, 2023), <https://home.treasury.gov/news/press-releases/jy1822>.

<sup>2</sup> *US conveys to Venezuela candidate bans must be lifted by November*, REUTERS (Oct. 18, 2023), <https://www.reuters.com/world/americas/us-conveys-venezuela-candidate-bans-must-be-lifted-by-november-2023-10-19/>.

<sup>3</sup> General License 44, OFAC (Oct. 19, 2023), <https://ofac.treasury.gov/media/932231/download?inline>.

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## New Opportunities in Venezuela? Key Takeaways from OFAC's October 2023 General Licenses

- Second, GLs [3I](#),<sup>4</sup> [5M](#),<sup>5</sup> and [9H](#)<sup>6</sup> ease restrictions on U.S. persons engaging in transactions in certain Venezuelan debts and securities issued prior to August 25, 2017.
- Finally, GLs [43](#)<sup>7</sup> and [45](#)<sup>8</sup> authorize transactions with CVG Compania General Minería de Venezuela CA (Minerven) and its subsidiaries concerning the gold industry, and Consorcio Venezolano de Industrias Aeronáuticas y Servicios Aéreos, S.A. (Conviasa) related to repatriation of Venezuelan nationals to Venezuela.

We highlight here five key takeaways from these significant changes to the sanctions regime.

### 1. **Newly issued GL 44 authorizes not only participation, but also broad payment terms in the Venezuelan energy sector.**

The most significant easing of U.S. sanctions toward Venezuela is GL 44, which lifts many restrictions related to the Venezuelan oil and gas sector. These authorizations are in place for six months—until **April 18, 2024**. Specifically, GL 44 authorizes U.S. persons to engage in transactions otherwise prohibited by the Venezuela Sanctions Regulations, 31 C.F.R. Part 591, “related to oil and gas sector operations in Venezuela,” including (but not limited to) transactions related to (1) production, lifting, sale, and exportation of oil or gas from Venezuela, and provision of related goods and services; (2) payment of invoices for goods or services related to oil or gas sector operations in Venezuela; (3) new investment in oil or gas sector operations in Venezuela; and (4) delivery of oil and gas from Venezuela to creditors of the Government of Venezuela (“**GoV**”), including creditors of Petróleos de Venezuela, S.A. (“**PdVSA**”) or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest, for the purpose of debt repayment.<sup>9</sup> Because the principal target of the sanctions is the GoV, the biggest effect of these authorizations is the ability of U.S. persons to transact with the GoV and PdVSA for oil and gas-related transactions.

### 2. **General License 44 does not authorize U.S. persons to deal in PdVSA debt except in limited circumstances.**

Executive Order (“E.O.”) 13808, which prohibits U.S. persons from dealing in the new debt of (including the extension of credit to) PdVSA for over 90 days, still remains in effect for some transactions.<sup>10</sup> Specifically, the prohibitions of E.O. 13808 do not apply to payment of invoices for goods or services related to oil or gas sector operations in Venezuela and delivery of oil and gas from Venezuela to creditors of the GoV. This is important because PdVSA has begun requiring prepayment for shipments of oil, and as a result, purchasers will be extending credit to PdVSA between the time of payment and the

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<sup>4</sup> General License 3I, OFAC (Oct. 19, 2023), <https://ofac.treasury.gov/media/932211/download?inline>.

<sup>5</sup> General License 5M, OFAC (Oct. 19, 2023), <https://ofac.treasury.gov/media/932216/download?inline>.

<sup>6</sup> General License 9H, OFAC (Oct. 19, 2023), <https://ofac.treasury.gov/media/932221/download?inline>.

<sup>7</sup> General License 43, OFAC (Oct. 19, 2023), <https://ofac.treasury.gov/media/932226/download?inline>.

<sup>8</sup> General License 45, OFAC (Oct. 19, 2023), <https://ofac.treasury.gov/media/932236/download?inline>.

<sup>9</sup> GL 44 § (a)(1)-(4).

<sup>10</sup> E.O. 13808(a)(i)-(ii).

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## New Opportunities in Venezuela? Key Takeaways from OFAC's October 2023 General Licenses

delivery of product.<sup>11</sup> GL 44 does not remove the prohibition on extending credit to PdVSA generally, but it *does* eliminate the prohibition against PdVSA using oil to repay its creditors, which would presumably include buyers who have prepaid PdVSA for oil.

Thus, it would seem that U.S. persons who prepay for shipments of oil from PdVSA will be permitted to accept oil/gas from Venezuela as repayment for the debt created by the prepayment, even if the delivery of oil/gas from Venezuela for the purpose of debt repayment occurs over 90 days after the purchase. Moreover, it is not clear whether OFAC intended this outcome, given that the authorization for E.O. 13808 does not extend more broadly to the oil and gas sector.

### 3. **Current authorizations are ambiguous on whether sale of product to Venezuela is permitted under General License 44.**

While GL 44 authorizes various transactions *related to oil and gas sector operations in Venezuela*, and includes a non-exhaustive list of transactions covered by the authorization, the license is silent on whether this includes imports of oil and gas to Venezuela where not specifically for use in Venezuela's oil and gas operations. The limitation in the license to transactions "related to oil and gas sector operations in Venezuela" suggests that the authorization does not extend to the importation of oil or gas produced outside of the country because such product would not be related to oil or gas sector operations in Venezuela. While importation of oil and gas appears related to the Venezuelan sector when related to activities such as refining, GL 44 does not appear to authorize such imports for the use in other sectors of the Venezuelan economy.

### 4. **Market participants should strongly consider the possibility of expiration or revocation of General License 44.**

OFAC has stated that "[t]he 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."<sup>12</sup> While political groups in Venezuela have come to an agreement regarding the upcoming Venezuela elections, the direction of U.S. sanctions will turn on whether the Maduro regime honors its commitments to open elections in 2024. Moreover, the United States may decide not to extend oil and gas authorizations unless opposition candidate bans are lifted and political prisoners are freed. Maria Corina Machado's recent victory in the opposition parties' primary election puts additional pressure on the Maduro regime to lift a ban on her holding public office.<sup>13</sup> The Maduro regime responded to her victory by launching a criminal investigation into the primary, making accusations of electoral violations, financial crimes, and

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<sup>11</sup> Marianna Parraga, *Exclusive: Venezuela's PdVSA signs spot sale contracts, demands prepayment –documents*, REUTERS (Oct. 25, 2023), <https://www.reuters.com/markets/commodities/venezuelas-pdvsa-signs-spot-sale-contracts-demands-prepayment-documents-2023-10-25/>.

<sup>12</sup> *Frequently Asked Questions Related to the Suspension of Certain U.S. Sanctions with Respect to Venezuela on October 18, 2023*, OFAC (Oct. 18, 2023), <https://ofac.treasury.gov/media/932241/download?inline>.

<sup>13</sup> *Machado formally wins Venezuela primary, government warns against foreign interference*, REUTERS (Oct. 26, 2023), <https://www.reuters.com/world/americas/machado-formally-wins-venezuela-primary-government-warns-against-foreign-2023-10-26/>.

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## New Opportunities in Venezuela? Key Takeaways from OFAC's October 2023 General Licenses

conspiracy.<sup>14</sup> It is entirely possible, given the uncertainty around the 2024 elections, that the United States could allow the license to expire in March or even revoke the license ahead of the expiration date.

Because this license is ultimately based on political considerations, market participants should be prepared for the license to be revoked or not extended past its stated expiration, based on forthcoming actions by the Maduro regime. Specifically, companies should consider short-term contracts, include permissive termination clauses in such contracts, and otherwise make preparations for the possibility that the license is not extended in April or is revoked early.

### 5. The broad scope of Russia sanctions extends to Venezuela-related transactions.

GL 44 excludes provision of goods or services to, or investment in, entities in Venezuela owned or controlled by, or in a joint venture with, an entity located in the Russian Federation. This exclusion does not contain a minimum threshold, so any involvement by a Russian entity in a joint venture is sufficient to exclude it from the authorizations of GL 44.

Russian entities are substantially involved in the Venezuelan oil and gas industry.<sup>15</sup> Russia and Venezuela have assisted one another in evading U.S. sanctions. Accordingly, OFAC has taken pains to ensure that Russia does not benefit from the easing of Venezuelan sanctions through these restrictions. Participants in this market should undertake due diligence to ensure there is no Russia nexus to any transactions that appear authorized by GL 44.

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<sup>14</sup> *Venezuela launches criminal investigation into opposition's presidential primary*, REUTERS (Oct. 25, 2023), <https://www.reuters.com/world/americas/venezuelas-machado-wins-presidential-primary-near-final-count-shows-2023-10-25/>.

<sup>15</sup> *See EXCLUSIVE Russian oil firm shuffles Venezuela assets as sanctions bite*, REUTERS (Mar. 29, 2022), <https://www.reuters.com/business/energy/exclusive-russian-oil-firm-shuffles-venezuela-assets-sanctions-bite-2022-03-29/>.

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