

The new economic sanctions regulations in the Venezuelan hydrocarbon sector

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COLECCIÓN
TEXTOS

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Outline

- The relationship between the new oil contracts and the economic sanctions.
- The “regulatory sanitation room” in the Venezuelan oil industry.
- The economic sanctions and PDVSA's external debt.
- Conflicts between economic sanctions and the law of oil contracts.



The relationship between the new oil contracts and the economic sanctions.



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- The reform of the Organic Hydrocarbons Law introduced two new oil contracts that can be signed by PDVSA's affiliates and joint ventures:
 - ✓ Oil contracts between affiliates and private investors.
 - ✓ Oil contracts between the joint venture and the minority shareholder.
 - The new contracts are similar to the CPPs, “oil services agreement”: private investors undertake production and, under some circumstances, marketing, on behalf of the affiliates and joint ventures.

The relationship between the new oil contracts and the economic sanctions.

- Under EOs 13857 and 13884, PDVSA, its affiliates, and joint ventures are subject to sanctions. As a result :
 - ✓ PDVSA is prohibited from conducting operations in the U.S. or with U.S. persons.
 - ✓ Third-party operators are prohibited from engaging with PDVSA to bypass sanctions (the “secondary sanctions”).
- Additionally, PDVSA could be considered an instrumentality of a Foreign Terrorist Organization, creating additional barriers to interacting with any operator (8 U.S.C. 1189).
- This regulatory framework blocks the implementation of the new oil contracts.



The “regulatory sanitation room” in the Venezuelan hydrocarbon industry.

- The U.S. Executive issued a complex regulatory framework to authorize, under limited conditions, oil & gas prohibited operations.
- The result is a “regulatory sanitation room”: a regulatory space controlled by the U.S. Government to prevent conduct and operations considered a threat to economic security.
- This framework is based on EO 14347 and GL 46A, 47, 48, 49, and 50A.
- The enforcement of this framework is reinforced through the civil forfeiture of tankers and oil that breach economic sanctions regulations or anti-terrorism laws (18 U.S. Code § 981).



The “regulatory sanitation room.”

Activities	Regulation
Upstream	Only six operators are authorized by GL50A (BP, Chevron, Eni, Maurel & Prom, Repsol, and Shell). However, any operator can negotiate new projects with the Government of Venezuela, but OFAC must authorize the execution of new oil contracts or gas licenses (GL 49).
Downstream	GL46A only authorized U.S. persons.
Supply of diluents	GL47 authorized the supply of U.S.-origin diluents exclusively by U.S. persons.
Public procurement	Public procurement can be conducted only for U.S. persons and U.S. goods and services (GL48).
Government take and revenues of the Government of Venezuela	EO 14373 and GLs mandated that any oil (and gas) payments to the GoV, including “government take,” be deposited into bank accounts controlled by the U.S. Government.

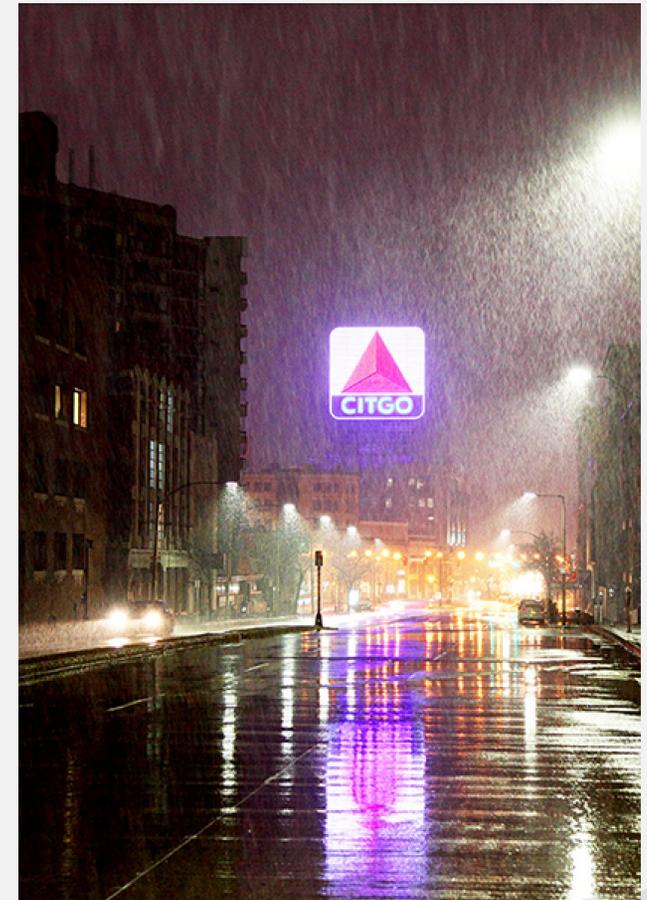
Firms from North Korea, Iran, Russia, China, and Cuba are excluded.

The “regulatory sanitation room” and the fiscal institutions

Ordinary institutions	The “regulatory sanitation room” institutions
PDVSA controls exports, including contractual terms and pricing.	The USG manages exports, including contractual terms and pricing.
The operators (affiliates and joint ventures) pay the “government take” (royalties & special taxes) to the GoV.	Authorized firms deposit payments for “government take” in U.S.-controlled bank accounts (non-hydrocarbon taxes and fees are excluded).
PDVSA receives all the revenue from its own production (not from production under the new oil contracts).	PDVSA's own revenues are also deposited in the U.S.-controlled bank accounts
PDVSA is required to sell all foreign-exchange currencies to the Central Bank, which will manage them in accordance with its constitutional monetary responsibilities.	The USG controls PDVSA's foreign currency exports and decides the amount allocated to the Venezuelan exchange market.

The economic sanctions and PDVSA's external debt.

- PDVSA's external debt (over \$60 billion *plus* China) hampers its international oil & gas operations due to litigation risk from legacy creditors.
- Some U.S. courts have ruled that creditors of the Republic can seize PDVSA's assets.
- To avoid this litigation risk, EO 14373 adopted an “Iraqi solution”: creditors cannot seize any of the GoV's deposited funds, which are protected by the FSIA.
- GLs prohibited debt swaps, creating an obstacle to adopting debt repayment instruments similar to those used in the CPPs.



Conflicts between economic sanctions and the law of oil contracts.

- According to Articles 7 and 8 of the Reform of the Organic Hydrocarbons Law:
 - ✓ The new oil contracts should be governed by the Venezuelan Law.
 - ✓ Any contractual dispute should be decided by (i) Venezuelan courts or (ii) an alternative dispute mechanism, including arbitration.
- GLs introduced forced contractual provisions:
 - ✓ The laws of the U.S. or any jurisdiction within the U.S. govern the contracts.
 - ✓ Any dispute resolution under the contract occurs in the U.S.

