CLIFFORD

CHANCE

Client Memorandum
May 2011

New US Sanctions Against PDVSA

Yesterday, the US Department of State ("State") imposed sanctions on Petróleos de Venezuela S.A. ("PDVSA") under the Iran Sanctions Act, as amended by the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 ("CISADA"). Although State has now imposed CISADA sanctions on a total of nine firms, the only target of any financial or economic significance to the US and world economy is PDVSA.

CISADA

Among other things, CISADA authorizes State, under delegated authority from the President, to impose sanctions on non-US firms in response to entirely non-US conduct related to Iran's energy sector, including:

(1) providing goods, services, technology, information or support worth $1,000,000 or more that directly and significantly facilitates the maintenance or expansion of Iran's domestic production of refined petroleum products; (2) exporting to Iran refined petroleum products valued at $1,000,000 or more or providing goods or services worth $1,000,000 or more to Iran that directly and significantly contribute to Iran's ability to import refined petroleum products; or (3) making an "investment" of more than $20 million in Iran's energy sector.

The sanctions available under CISADA range from denial of US Export-Import Bank ("Ex-Im") facilities, ban on US Government procurement, denial of US export licenses or import privileges, restrictions on access to the US banking system or substantial bank loans, up to and including an outright blacklisting to prevent the sanctioned firm from access to US business or the US financial system. On May 23, 2011, the President issued a new Executive Order "Authorizing the Implementation of Certain Sanctions set Forth in the Iran Sanctions Act of 1996, as Amended" to enable the US Treasury Department's Office of Foreign Assets Control ("OFAC") to impose the more draconian forms of CISADA sanctions at the direction of State. Implementation of other sanctions which do not involve the US financial system will occur through federal agencies other than OFAC.

Responding to lobbying pressure from anti-Iranian activist groups, prominent members of Congress have demanded actual use of CISADA rather than only the threat of use by State, OFAC and the President. Key Senators have even made the imposition of CISADA sanctions against additional non-US companies and banks (both by

If you would like to know more about the subjects covered in this publication or our services, please contact:

David DiBari +1 202 912 5098

George Kleinfeld +1 202 912 5126

Megan Gordon +1 202 912 5021

Ekaterina Hazard +1 202 912 5027

To email one of the above, please use firstname.lastname@cliffordchance.com

Clifford Chance, 2001 K Street NW,
Washington, DC 20006-1001, USA
www.cliffordchance.com

State and OFAC) a pre-condition for acting on the nomination of David Cohen to replace Stuart Levey as the new Under Secretary of Treasury for Terrorism and Financial Intelligence. These same Senators generally regard Hugo Chavez, the President of Venezuela, with extreme hostility, making PDVSA an obvious candidate for CISADA sanctions, particularly if one of the Obama Administration's reasons for the sanctions is to placate Congressional demands for action.

Sanctions Against PDVSA

In announcing the new CISADA sanctions, State indicated that "PDVSA, the state-owned oil company of Venezuela, has delivered at least two cargoes of reformate to Iran between December 2010 and March 2011, worth approximately $50 million. Reformate is a blending component that improves the quality of gasoline." However, State did not impose any of the more severe forms of CISADA sanctions on PDVSA. Rather, the sanctions prohibit PDVSA from competing for US Government procurement contracts, from securing Ex-Im financing, and from obtaining US export licenses.

State further indicated that these sanctions do not apply to PDVSA subsidiaries and do not prohibit the export of crude oil by PDVSA to the United States.

Thus, the sanctions only prohibit dealings between US persons and PDVSA to the extent those dealings involve PDVSA itself rather than an affiliate, and also involve US government contracts, export of US-origin goods to PDVSA or Ex-Im facilities.

Because the sanctions have only limited effect, they do not preclude transactions between US persons and PDVSA outside the scope of the above-described prohibitions. However, US regulatory authorities presumably will expect US financial institutions to conduct enhanced due diligence of accounts that they maintain or transactions that they process for PDVSA to confirm that such accounts or transactions do not facilitate any business prohibited under the sanctions or any Iran-related activity of PDVSA.

In sum, although the sanctions appear primarily designed to placate Congress and symbolically punish PDVSA and President Chavez for their Iranian dealings, they do not appear likely to prevent business as usual between PDVSA, through its various subsidiaries and affiliates, and US counterparties, subject to the above caveats.

www.cliffordchance.com

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh* ■ Rome ■ São Paulo ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Clifford Chance has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh.