

PDVSA Faces U.S. Government Scrutiny

According to recent news reports, *Petróleos de Venezuela, S.A.* ("**PDVSA**") has been under intense scrutiny by U.S. authorities and recent reports indicate that the U.S. may have more information than previously suspected thanks to National Security Agency ("**NSA**") surveillance activities. On Wednesday *teleSUR*, a Latin American multimedia news platform, reported that it received a March 2011 memorandum detailing the NSA surveillance and targeting of PDVSA, including increasing surveillance of PDVSA leadership and internal PDVSA communications. The memorandum, labeled, "top secret," was provided to *teleSUR* by former NSA contractor-turned-whistleblower Edward Snowden.

The Wall Street Journal ("**WSJ**") last month reported that U.S. authorities have launched a series of wide-ranging investigations into whether Venezuela's leaders used PDVSA, the state-owned oil and natural gas company, to receive billions of dollars through kickbacks and other schemes. The WSJ article indicates that U.S. authorities, including federal prosecutors and federal agents from numerous law enforcement and regulatory agencies are coordinating actions, sharing evidence and witnesses in support of various investigations. No charges have been publicly filed.

These newly-reported investigations are not the first time that PDVSA has faced scrutiny from U.S. authorities:

- **CISADA**. In May 2011, PDVSA was designated under the Iran Sanctions Act ("**ISA**") of 1996, as amended by the Comprehensive Iran Sanctions, Accountability, and Divestment Act ("**CISADA**") of 2010, after delivering at least two shipments of reformat (a blending component that improves the quality of gasoline) to Iran, worth approximately \$50 million. The sanctions were intended to discourage further support by PDVSA of Iran's energy sector. The CISADA sanctions prohibit certain dealings with PDVSA, including: the provision of export assistance from the Export-Import Bank of the United States; the issuance of licenses for export of U.S. military, "dual-use," or nuclear-related goods or technology; or entering into procurement contracts with the U.S. government.
- **Section 311**. In March 2015, PDVSA was named by the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("**FinCEN**") in a Section 311 USA Patriot Act Notice of Findings against Banca Privada d'Andorra ("**BPA**"). According to the WSJ article, as a result of the FinCEN finding, Andorran and Spanish authorities seized control of BPA and its Spanish unit, Banco Madrid. Spanish authorities are now investigating the former President of PDVSA (Rafael Ramírez), a close friend or relative of Mr. Ramírez (Diego Salazar), and others who did business with PDVSA for possible money laundering. According to the Notice, false PDVSA contracts, often missing the name of the customer for services, were provided to BPA by a third-party money launderer ("**TPML**") to support the transfers of funds. The Notice also described activities involving the development of shell companies and complex financial products to siphon approximately \$2 billion from PDVSA. Between January 2011 and March 2013, BPA also facilitated the movement of at least \$50 million in send and receive transactions that were processed through the United States in support of the Venezuelan money laundering network. In 2014, BPA continued to facilitate the movement of funds related to this scheme through the U.S. financial system. Overall, BPA facilitated the movement of \$4.2 billion in transfers related to Venezuelan money laundering. From this total, it is currently unclear the total amount of funds laundered on behalf of PDVSA officials or agents.

What's next?

Financial institutions should be aware that:

- PDVSA faces potential U.S. government actions or charges and companies that engage in PDVSA-related transactions may find themselves becoming part of such investigations, at the very least as a potential third party witness to conduct under U.S. government scrutiny.
- Other financial institutions used by PDVSA to make payments or transfer funds may also be scrutinized and potentially implicated as the investigations progress.
- Past and future payments made to or received from PDVSA could be subject to close scrutiny by U.S. officials, under the Foreign Corrupt Practices Act ("**FCPA**") and/or U.S. Anti-Money Laundering regimes ("**AML**") if they were made in or through the United States or U.S. financial institutions, or on behalf of U.S. entities or a U.S. issuer.
- Since PDVSA is a state-owned entity all employees as well as representatives, consultants or agents acting on its behalf or on behalf of PDVSA officials are likely to fall under the definition of "foreign officials" in the FCPA, triggering FCPA violations for corrupt payments to foreign officials if they include a U.S. jurisdictional component.

At this point it is not clear if charges will be brought against PDVSA, or other third parties, for violations of the FCPA or AML laws in the U.S. However, investigations themselves can cast a very wide net over business dealings, creating significant business disruptions and seemingly endless scrutiny if not addressed urgently and effectively.

We believe this is a real risk and that it would be prudent for financial institutions to consider, on a risk basis, their potential exposure to PDVSA connections, and to consider well informed appropriate steps to mitigate any such risks.

Please do not hesitate to contact us with any questions.

Contacts

David DiBari

Partner

T: +1 202 912 5098

E: david.dibari@cliffordchance.com

Megan Gordon

Partner

T: +1 202 912 5021

E: megan.gordon@cliffordchance.com

George Kleinfeld

Partner

T: +1 202 912 5126

E: george.kleinfeld@cliffordchance.com

Ed O'Callaghan

Partner

T: +1 212 878 3439

E: edward.o'callaghan@cliffordchance.com

Wendy Wysong

Partner

T: +1 202 912 5030 (Washington)

T: +852 2826 3460 (Hong Kong)

E: wendy.wysong@cliffordchance.com

Hena Schommer

Associate

T: +1 202 912 5447

E: hena.schommer@cliffordchance.com

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www.cliffordchance.com

Clifford Chance, 2001 K Street NW, Washington, DC, 20006, USA

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