

UNITED STATES SANCTIONS ON VENEZUELA

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CIRCULAR

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This Circular provides information on the recent designation by the Government of the United States of Venezuela's Maritime Authority (Instituto Nacional de los Espacios Acuáticos – "INEA").

INEA was designated under Executive Order 13850 for operating in the oil sector of Venezuela and providing assistance to Venezuela's state-owned oil company, PdVSA.

The designation led to understandable confusion among shipowners who were exposed to the possibility that they would offend certain provisions of E.O. 13850 by utilizing or paying for services provided by INEA at Venezuela ports on voyages unrelated to the oil or other targeted sectors.

To address this side effect of INEA's designation, OFAC has now issued General License 30A appended to this Circular for information.

Background

Prior to being designated to the SDN list, INEA was blocked as a "Government of Venezuela" entity under E.O. 13884. This meant that, absent U.S. Government authorisation, U.S. persons were prohibited from engaging in virtually any transaction that involves INEA, either directly or indirectly. As such, U.S. persons (including U.S. banks) were prohibited from engaging in transactions involving INEA once E.O. 13884 was issued, absent the relevant authorisation.

General License 30 provided that authorisation for ordinary port expenses, e.g., tugs, port dues, etc., such that transactions involving INEA associated with ordinary port usage and expenses were permissible, provided the trade was not sanctionable. The designation of INEA to the SDN list created confusion as to whether the authorisation of GL 30 would still apply. GL 30 stated that it did not authorise activities or transactions prohibited by E.O. 13850, the authority under which INEA is now designated. Since E.O. 13850 was excluded from the scope of GL 30's authorisation and INEA is now a SDN under E.O. 13850, U.S. persons could not transact with INEA absent some other authorisation.

Non-U.S. persons do not face the same blocking restrictions as U.S. persons, but they will risk sanctions if it is determined they have provided "material assistance, goods or services" to a SDN designated under E.O. 13850.

Current situation as of 3 February 2021

The publication of GL 30A by OFAC clarifies the dilemma. GL 30A has addressed INEA's designation by authorising all transactions and activities prohibited by E.O. 13850 involving INEA (or any entity in which it owns 50% or more) that are *ordinarily incident and necessary to operations or use of ports in Venezuela*. There are exceptions to the authorisation, but these are the same exceptions that have been in GL 30 since it was first issued, e.g., no authorisation for transactions related to diluents or other activities prohibited by E.O. 13850.

While General Licenses apply to U.S. persons and activities with a U.S. nexus, we have been informed that OFAC has confirmed previously that a non-U.S. person does not engage in sanctionable conduct if it engages in conduct that would be authorised by a General License if engaged in by a U.S. person. We are advised that, as a matter of policy, GL 30A will apply to non-U.S. persons by analogy.

Accordingly, the International Group has since obtained guidance from experienced U.S. lawyers who have considered the relevant U.S. legal provisions in the round and have been advised that non-U.S. persons are

unlikely to be exposed to sanctions under EO 13850 or EO13884 for using ordinary port services provided by INEA in Venezuela and paying ordinary port expenses to or for INEA, provided such is in connection with non-sanctionable trade.

Payment to INEA in non-U.S. Dollar transactions

The authorisation provided in GL 30A applies also to U.S. banks processing payments associated with ordinary port services provided by INEA. However, despite the publication of GL 30A, U.S. and non-U.S. banks may apply stricter internal protocols which could result in delayed payments to INEA if they are made in U.S. dollars, and while GL 30A should provide some comfort to banks, the Club cannot provide guarantees to Members that banks will not reject or delay such payment. Members seeking to make payment to INEA other than in U.S. dollars should consult their bank or local agents to see whether such transactions will be able to proceed.

The Club will publish further guidance as and when it becomes necessary to do so.

Thanks to Gina Venezia at Freehill Hogan & Mahar's New York office for providing guidance on these matters.

All clubs in the International Group have issued a similarly worded common Circular.

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