COMPOSITION PLAN
(*Schuldeisersakkoord*)

BANCO DEL ORINOCO N.V.

December 1, 2023

Section A: EXPLANATORY STAEMENT TO THE COMPOSITION PLAN

1. Preamble

This Composition Plan (the '**Composition Plan**') is offered pursuant to article 133 and further of the Bankruptcy Act 1931 (the '**Bankruptcy Act**') to ordinary non-preferred creditors of **BANCO DEL ORINOCO N.V.**, a limited liability incorporated under Netherlands Antilles law and existing under the laws of Curaçao, registered at the Chamber of Commerce and Industry in Curaçao under number 64808 ('**BDO**') with regard its bankruptcy as declared by the Court of First Instance of Curacao ('the **Court**') on October 4, 2019.

In prelude to the Composition Plan the Court appointed receiver, Mr. Michiel R.B. Gorsira (the '**Receiver**'), residing in Curaçao and holding office there at Pietermaai 123, in his capacity of the sole receiver appointed by the Court entered into a memorandum of understanding (the '**MOU**'), which content is not made public due to its confidential nature dated October 26, 2023 with Cartera de Inversiones Venezolanas C.A., duly organized and existing under the laws of Venezuela, domiciled at the Av. Blandin con Av. Principal La Castellana, Edif. BOD, piso 8, , Urb. La Castellana, Chacao, Miranda, ZP 1060 ("**CIVCA**"), and Banco Occidental de Descuento, Banco Universal C.A., duly organized and existing under the laws of Venezuela, domiciled at Calle 77 (Av. 5 de Julio) and Av. 76, Edif. Sede Industrial, Maracaibo, Zulia, ZP 4001, ("**BOD**" and together with CIVCA, 'the **Cartera Group**') as sole shareholders of BDO pertaining to, insofar relevant for this matter, the offering of the Composition Plan.

It should be noted that due to sanctions imposed by the Office of Foreign Assets Control (OFAC) of the Treasury Department of the United States of America, and the sanctions imposed by Canada and the European Union with regard to Venezuela in general dating back to 2015, it is extremely difficult for the predominantly Venezuelan creditors of BDO to open and maintain a US dollar or Euro bank account either in Venezuela or abroad (See Annex "**1**" *Memorandum on Economic Sanctions and the Impact on Venezuelan Financial Sector*). This is the main reason for the Cartera Group to work closely together with the Receiver in order to arrange for alternative ways of settling the claims on BDO be means of other payment methods and/or payment options denominated in the Composition Plan in order to settle any and all claims of all BDO creditors.

> The Sanctions Program, which essentially began around 2015, which was expanded in 2017, 2018 and 2019 and has continued to further develop, has intermingled a broad range of blocking sanctions and sectoral or transactional sanctions, which primarily prohibited "U.S. Persons" from dealing with these blocked entities or incurring in these prohibited transactions, but the Sanctions Program has also established broad bases and criteria for the imposition of "Secondary Sanctions," which result in the inclusion of any person, including any Non-U.S. Person in the world on OFAC's Specially Designated Nationals and Blocked Persons List (hereinafter defined as SDN/OFAC").
>
> Thus, all banks and financial institutions worldwide, regardless of their nationality, as well as natural or legal persons, may be exposed to secondary sanctions for direct or indirect violation of the sanctions regulations.

Under the Sectoral Sanctions approach, the EOs and specific "prohibited transactions" relating to Venezuela are as follows:

> ● EO 13808 of August 24, 2017, which prohibits all transactions relating to, provision of, financing for, and other dealings in the following: 1(a)(i) New debt maturing in excess of 90 days of PDVSA; 1(a)(ii) New debt maturing in excess of 30 days, or new principal, of the Government of Venezuela; 1(a)(iv) Payments of dividends or other distributions of profits to the Government of Venezuela; 1(b) The purchase by a U.S. Person of securities of the Government of Venezuela.
>
> ● EO 13827 of March 19, 2018, prohibiting all transactions by U.S. Persons that may involve the Petro or any other digital currency, digital coin or digital token, which has been issued by, for or on behalf of the Government of Venezuela.
>
> ● EO 13835 of May 21, 2018, which prohibits transactions by U.S. persons relating to the purchase of any debt owed to the Government of Venezuela, including accounts receivable; and the sale, transfer, assignment or pledge as collateral by the Government of Venezuela of any equity interest in any entity in which the Government of Venezuela has a 50% or greater equity interest.

The Venezuela Blocking Sanctions are specifically elaborated in EO 13692, dated March 8, 2015; EO 13850, dated November 1, 2018; and EO 13884, dated August 5, 2019. As of today, for example, more than two hundred persons related to the Venezuelan Government have been expressly included in OFAC's SDN list, including PDVSA and several state-owned banks.

EO 13850, referred to above, in addition to establishing limitations on a specific sector of the economy, also provides for the establishment of restrictions on "any other economic sector" as determined by the U.S. Department of the Treasury. This EO determines the discretion the U.S. government has to sanction any economic activity of Venezuela that it deems necessary for its purposes.

The consequences of any violation of the Venezuela Sanctions could be of very severe penalties, including civil fines of up to twice the amount of the transaction that is the basis for the violation, and criminal fines of up to USD 1,000,000, or if an individual, imprisonment of up to 20 years, or both; in addition to the risk of the impact of a designation and listing on the SDN/OFAC List in the context of secondary sanctions, which could be disastrous for any banking entity.

All of this has led to a severe scenario of deterrence, banking over-compliance and erosion of correspondent banking relationships. Correspondent banks are increasingly reluctant to provide correspondent banking services in certain jurisdictions (such as Venezuela) where the perceived risk of economic sanctions, the other regulatory burden related to anti-money laundering, anti-terrorist financing and/or legal and enforcement uncertainties and the high

costs associated with implementing enhanced and effective compliance programs and the potential reputational risk in the event of non-compliance appear to be higher.

In essence, the sanctioning regime given its general scope, not only encompasses those who are involved in potential activities subject to alert or sanction related to the Government of Venezuela or any sanctioned subjects, but also any person who, at its discretion, is considered to be directly or indirectly related to them. To date, according to qualified international institutions, Venezuela is among the five most sanctioned countries.

The Cartera Group holds a securities investment portfolio of assets worth more than the total debts of BDO (the '**Investment Portfolio**') held in custody by a professional and experience third party.

In accordance with the MOU the Cartera Group has arranged for payment of the bankruptcy costs pertaining to the Receiver and the preferred creditors amongst which the Curacao Tax Authority and the Social Security Bank and further bankruptcy estate costs as depicted in the reports as from time to time published by the Receiver and in accordance with the Bankruptcy Act submitted to the Court.

Of great importance is the fact that the Cartera Group and related individuals and companies (the '**Cartera Group and Related Individuals and Companies'**) in the aggregate form the single largest group of creditors in the bankruptcy of BDO. The Cartera Group and Related Individuals and Companies are in favor of the Composition Plan and will subsequently vote in favor of acceptance of the Composition Plan. It is important to note that, to the date of presentation of this Composition Plan, Cartera Group and Related Individuals and Companies represents 70% of BDO creditors and 75% of the admitted and verified claims on BDO.

In its pursuance of alternative payment and/or settlement of the BDO creditors, given the limited possibilities thereto due to the previously mentioned OFAC sanctions and EU Sanctions, the Cartera Group is offering alternative forms of payment as described in the following.

The purpose of the Composition Plan is to make full and final payment and/or settlement of the claims of the creditors of BDO. The Composition Plan, once approved by the Court, will be put to a vote of the common creditors of BDO. The Composition Plan provides for payment and/or settlement of the creditors of BDO of their admitted and verified claims on BDO (See List of Submitted and Admitted Claims, provided by the Receiver).

Section B: PROVISIONS OF THE COMPOSITION PLAN

Article 1. Composition Plan

1.1 Conditional upon the acceptance of the Composition Plan by the required majority of the common creditors of BDO that participate in the voting procedure, and subject to the confirmation of the Composition Plan by the Court, once the Composition Plan becomes irrevocably effective (the '**Effective Date**'), distributions will be made by the Cartera Group in the following way to the creditors of BDO in accordance with the provisions of the Composition Plan.

1.2 The Composition Plan provides for multiple options for payment and/or settlement of claims of common creditors of BDO. It is up to each common creditor to choose one or more of the payment and/or settlement options, which options are set out in the Composition Plan.

1.3 As of the Effective Date in accordance with the Bankruptcy Act each creditor of BDO is bound by the Composition Plan, regardless of whether such creditor has voted against or in favor of the Composition Plan.

1.4 Except for the entitlement to receive payment and/or settlement on the basis of the Composition Plan, nothing in the Composition Plan should be construed as providing creditors of BDO with any other rights or entitlement than as contemplated in the Composition Plan.

1.5 Payment and/or settlement of any amounts to creditors is linked to (i) the actual market value of the Investment Portfolio; (ii) Country risk; (iii) Liquidity of assets; (iv) Market volatility and any other factor that could affect negotiation margin of the assets that make up the Investment Portfolio, at the time of payment and/or settlement.

Article 2. Alternatives for the Settlement of BDO Creditors

The difficult situation derived from the Sanctions Program implemented by the OFAC, as well as Canada and the EU with regard to Venezuela in any way, and its derived consequences, have affected the creditors of BDO, which is why CIVCA, with the objective of protecting and further benefit such creditors, has designed payment mechanisms for their current claims, which are currently subject to immobilization and sanctionatory risks, as well as the inherent market risks.

2.1. <u>BOI Bank.</u>

BOI BANK CORPORATION, is an institution duly organized and existing under the laws of Antigua & Barbuda, with its registered office at Village Walk Commercial Center Suite #206, 1st floor Friar´s Hill, St John's Antigua, ('**BOI Bank**').

The Cartera Group shall request BOI Bank, to seek corporate approval from its corporate governance bodies. Upon such approval, BOI Bank will assume responsibility for management and payment to certain creditors who wish to do so, to which end, BOI Bank will provide each of such creditors with an escrow account at BOI Bank, with funds equal to the investment amount of the account that the creditor had at BDO as has been detailed in the official record of the Court (in Dutch: *proces-verbaal*) of the BDO creditors' meeting.

A. BDO creditors that already have an account with BOI Bank and wish to transfer their claim on BDO to BOI Bank will be provided with and credited to BOI Bank's custodial account for the amount of their admitted and verified BDO claim. The amounts in the custodial account will only be available once BOI Bank receives BDO's portfolio with the equivalent securities at market value, and such portfolio transfer will be at the same custodian.

B. Only the creditors that have no account with BOI Bank and wish to transfer their claim on BDO to BOI Bank must individually enter into an agreement with BOI Bank under the same terms and conditions as BOI Bank sets for its regular clients. BOI Bank will provide a custodial account for such creditor in accordance with the current laws of Antigua, subject to compliance with BOI Bank´s Anti-Money Laundering and Anti-Terrorism Financing (AML/ATF) regulations. The amounts in the custodial account will only be available once BOI Bank receives BDO's Investment Portfolio with the equivalent securities at market value, and such Investment Portfolio transfer will be executed at the same custodian (meaning, that the Investment Portfolio will move from the account of BDO at the Custodian to the account of BOI Bank at the same custodian).

C. Acceptance of such alternative with BOI Bank by this group of creditors will be considered a full and final discharge of BDO and the BDO bankruptcy estate by BOI Bank and such creditors.

2.2. <u>Trust Fund.</u>

The Cartera Group through CIVCA, offers BDO's creditors payment and/or settlement of their claims through a participation in a Trust Fund (CPBF). This Trust Fund would consist of a diversified portfolio of investments comprising:

- Stocks, shares and the profits of a set of operating companies consolidated for many years in the oil, advertising, insurance and health sectors.
- Real estate developments.

The companies included in the Trust Fund would be well-established companies with a record of accomplishment of many years in their respective sectors. These companies would have good potential for growth and profit generation.

The real estate developments included in the Trust Fund would be developments located in Venezuela. These developments would have good appreciation potential over time.

Trust Fund:

- The Trust Fund will be constituted in a first-tier Bank in Venezuela.
- The aforementioned investments, owned by CIVCA, will be contributed as fiduciary assets and, consequently, will form a separate patrimony of a trust created by CIVCA for this purpose, of which CIVCA is the sole initial beneficiary.
- The administration of the Trust Fund will be in charge of a Coordination and Investment Committee (the "**Committee**") integrated by five (5) main independent members and three (3) alternates, without any previous connection with CIVCA or with any of the companies and projects that will integrate the trust fund, which have already been appointed according to their professional capacity and personal and ethical conditions, following international standards.
- The aforementioned credits, as well as the participation in the trust benefit, have equivalent values.
- As a result of the exchange, CIVCA will be subrogated to all the rights that, for any reason, correspond to the creditor in the BDO.
- The creditor will have a participation equivalent to a percentage of the profit produced by the initial trust.
- The liquidation of the trust and the determination of the trust yield and the creditor's corresponding participation will take place at the expiration of the fifth (5) year following the date of the agreement signed between the parties.

Main features:

- Interest rate generated as remuneration of the funds:
    - 2% for the 1st year,
    - 2% for the 2nd year,
    - 3% for the 3rd year,
    - 4% for the 4th year and
    - 5% for the 5th year.

- Interest payment as of the second year (interests generated for the 1st and 2nd years will be paid at the end of the 2nd year).
- Possible advance payment as from the second year.
- Free negotiability as from the third year and restricted between Trust holders from the beginning.

Creditors accepting this immediate payment option would receive a share of the Trust Fund returns for a period of five (5) years. The Trust Fund returns would be distributed in accordance with a distribution plan to be approved by CIVCA and the Committee.

2.3. Option for payment in cash for small creditors

The Cartera Group offers all creditors with claims of less than USD 10,000.00 a cash payment option. Under this option, the creditor will be granted a participation in the trust fund, explained in Point No. 2.2, for the amount of its claim. CIVCA, for its part, agrees to purchase said participation at 100% of its value by paying the creditor in cash within 360 days following the issuance of the corresponding participation. In order to be able to repurchase the participation in

cash, CIVCA will open a special escrow account where the cash necessary to complete the operations under this option will be deposited.

Remaining Funds after Settlement of Claims

Any remaining portion of the Investment Portfolio will be transferred to the Cartera Group, or a third party to be appointed in writing, by notice to the Parties, by the Cartera Group, in the Cartera Group's sole discretion provided that the transfers and procedures contemplated under sections 2.1, 2.2, and 2.3 above have been completed.

Article 3. Recognition of Claims

For the purposes of the Composition Plan each claim that is recognized and verified by the Trustee and as such admitted to the Court approved list of admitted claims (the "Acknowledged Claims") will be recognized by the Cartera Group for the value attributed to such claim.

Article 4. Binding Nature of the Values Attributed to Acknowledged Claims

4.1 As of the Effective Date, each ordinary creditor is bound by the value attributed to the Acknowledged Claims pursuant to Article 3 above, regardless of whether such ordinary creditor has voted against or in favor of the Composition Plan or has abstained from voting.

4.2 Except for the entitlement to receive distributions on Acknowledged Claims as provided in the Composition Plan, nothing in the Composition Plan should be construed as providing holders of Acknowledged Claims with any other rights or entitlement that as of the Effective Date do not exist under the applicable legal or other provisions that are applicable to the Acknowledged Claims.

Article 5. Currency of Distributions

The currency to be used for distributions or payments within the framework of the Composition Plan will solely be made in United States of America dollars. The equivalency and therefore the exchange rate shall be solely and exclusively determined by the Cartera Group.

Article 6. Modification and withdrawal of the Composition Plan

Cartera Group explicitly reserves its right to, in accordance with the Bankruptcy Act, prior to the final voting on the acceptance thereof by the creditors of BDO to amend, modify or remedy any omission or inconsistency in the Composition Plan, in such a manner that may be considered necessary to carry out the purpose and intent of the Composition Plan or even withdraw the Composition Plan. Proposed amendments, modifications or remedy of the Composition Plan or the intention to withdraw the Composition Plan will be communicated to the creditors of BDO by the Cartera Group via the Receiver.

Article 7. Post Effective Date Provisions

7.1 As of the Effective Date, the bankruptcy proceedings related to BDO shall end in accordance with the Bankruptcy Act, and BDO shall continue to exist for the purpose of fulfillment of its obligations under the Composition Plan as provided for by the Cartera Group.

7.2 As of the Effective Date, each ordinary creditor of BDO is bound by the Composition Plan, whether or not such ordinary creditor of BDO has voted in favor or against the Composition Plan.

Article 8. Notices

Any notice or other request which may be required under the Composition Plan shall be in writing and either delivered personally, by regular mail, by express courier, or by e-mail, and shall be deemed given when so delivered and shall be addressed as follows:

The Cartera Group
Attn.: Mr. Mirto Murray at the following email address: mirto@murray-attorneys.com and following address: Dr. Henri Fergusonweg 6 Willemstad, Curaçao.

Article 9. Releases

As of the Effective Date, each and every creditor shall release or shall be deemed to have released BDO, its former directors and members of its supervisory board, the Cartera Group, its current and future directors, the Receiver, as well as their respective present or former, partners, employees, agents, officers, directors or principals, as well as any advisor, lawyer, accountant, custodian, agent or person engaged by any of the aforementioned entities and persons and regardless of whether such engagement has been terminated, is ongoing or shall be entered into (the '**Released Parties**') from, and none of the Released Parties shall have or incur any liability for, any claim for, cause of action for or other assertion of liability, for any act taken or omitted to be taken during the bankruptcy proceedings of BDO, the formulation or administration of the Composition Plan, including but not limited to, the manner in which any distributions is made under the Composition Plan, or any other act or omission in connection with the BDO bankruptcy proceedings, the Composition Plan and any annexes or documentation and communication related thereto, and any information whether in writing or orally provided in connection therewith, or any contract, instrument or other document related thereto; *provided however*, that nothing in this Article 9 shall effect the obligations of the Cartera Group under the Composition Plan, and that nothing in this Article 9 shall affect the liability of any person that otherwise would result from an act of omission that is determined irrevocable by the competent court to have constituted willful misconduct or gross negligence.

Article 10. Annexes

The Annexes to the Composition Plan form an integral part of the Composition Plan for all intents and purposes.

Article 11. Miscellaneous

a. Binding Effect. The Composition Plan shall be binding upon and inure to the benefit of the creditors hereto and their respective successors and assigns.
b. Invalid Provisions. If any provision of the Composition Plan is held to be illegal, or invalid, such provision shall be fully severable, and the Composition Plan shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of the Composition Plan, and the remaining provisions of the Composition Plan shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from the Composition Plan. Further, in lieu of each illegal, invalid or unenforceable provision there shall be substituted automatically as part of the Composition Plan a provision closest to the benefit of the creditors and the Cartera Group**.**
c. Entire Agreement. The Composition Plan embodies the entire agreement and understanding between the Cartera Group and the creditors relating to the subject matter hereof and supersedes any prior agreements and understanding related to the subject matter hereof.
d. Headings. The headings used in the Composition Plan are for convenience or reference only and shall not be taken into consideration in interpreting the Composition Plan.
e. References. In the Composition Plan, unless stated otherwise: (i) a reference to the singular includes the plural and vice versa, and (ii) other grammatical forms of a defined term have a corresponding meaning. All references to any (provision of) law shall also be deemed to refer to any modification thereof.

Article 12. Governing Law and Competent Court

The Composition Plan, as well as all rights and obligations arising out of or in connection with the Composition Plan, shall be governed by the laws of Curacao and any dispute arising out of the Composition Plan or any act, agreement or engagement arising out or in connection with the Composition Plan shall be exclusively submitted to the Court.

Advantages of the Composition Plan

The Composition Plan offers creditors a fair and equitable solution that will allow them to receive payment of their claims in an expedite and efficient manner.

Advantages of this Composition Plan include but are not limited to:

- Alternatives for the settlement of all claims, specially designed to suit different types of creditors.
- Special attention and protection to small creditors and the option for them to obtain their sums in cash.
- Reduced transaction costs.
- Possibility to trade instruments and positions in secondary markets prior to maturity.
- Despite of the situation related to the OFAC, Canada and European Sanctions' regimes, and its effects on Venezuelan interests, the Composition Plan provides for legal and adequate alternatives for the settlement of claims. Moreover, the alternatives for settlement have been carefully designed in order for them to be as expedite as possible, without the delays typical

of cumbersome banking procedures for the opening of accounts or participation in trusts, among others.

Section C: LIST OF ANNEXES

Annex 1: Memorandum on Economic Sanctions and the Impact on Venezuelan Financial Sector

MEMORANDUM

TO: Meeting of Creditors of the Banco del Orinoco N.V. case, dated on November 12th, 2023.

FROM: Cartera de Inversiones Venezolanas, C.A.

DATE: November 3, 2023.

REF: Economic Sanctions and the Impact on the Venezuelan Financial Sector.

Dear all,

Please find below the conclusions of the legal experts regarding the Economic Sanctions imposed by the United States of America ("U.S."), Canada, the United Kingdom ("UK") and the European Union ("EU") and the impact on the Venezuelan financial sector, including the loss of correspondent banking relationships and the ability of the banks to fulfill transaction requests in a timely manner or at all.

I. EXECUTIVE SUMMARY AND CONCLUSIONS

International economic sanctions have become one of the most prominent instruments of foreign policy and represent a significant risk for banks and other financial institutions. Such sanctions are one of the main reasons why banks and financial institutions over comply and cut back correspondent banking relationships.

Venezuela has been the target to multiple economic sanctions programs around the world, including but not limited to the sanctions imposed by Canada, the UK, the EU and the U.S. In particular, the U.S. Sanctions Program against Venezuela (hereinafter "Sanctions Program") is the strongest, most comprehensive, high-impact, complicated, and constantly changing sanctions program ever implemented against Venezuela, and has surpassed the complexities and scope of any other sanctions program against any other country in the world.

The Sanctions Program, which essentially started around 2015, which was expanded in 2017, 2018 and 2019 and has continued to evolve, has blended a broad range of blocking sanctions and sectoral or transactional sanctions, which primarily prohibited "U.S. Persons" from dealing with these blocked entities or engaging in these prohibited transactions, but the Sanctions Program has also established broad bases and criteria for the imposition of "Secondary Sanctions", which result in the inclusion of any person, including any Non-U.S. Person in the world on the *Specially Designated Nationals and Blocked Persons List* (hereinafter defined as SDN/OFAC"*)* of the Office of Foreign Assets Control of the U.S. Department of the Treasury (hereinafter defined as the Office of Foreign Assets Control of the U.S. Department of the Treasury, Office of Foreign Assets Control of the U.S. Department of Justice).The *Office of Foreign Assets Control* (hereinafter defined as "OFAC"). Thus, all banks and financial institutions worldwide, regardless of their nationality, may be exposed to secondary sanctions for direct or indirect violation of sanctions regulations.

The U.S. sanctions related to Venezuela have not only resulted in the blocking and/or listing on the

SDN/OFAC List of hundreds of persons (individuals, companies and other entities, including PDVSA as the main state-owned company in the oil and gas sector), but has also provided for the specific determination of several entire economic sectors as at-risk sectors for sanctions purposes (including the "financial sector" through the Determination made by the Secretary of the Treasury on March 22, 2019, pursuant to Executive Order ("EO") 13850 of 2018), and has further imposed the complete blocking of the entire "Government of Venezuela" pursuant to EO 13884 of August 2019.

In addition, the consequences of any violation of the Venezuela Sanctions could be of very severe penalties, including civil fines of up to twice the amount of the transaction that is the basis for the violation, and criminal fines of up to USD 1,000,000, or if an individual, imprisonment of up to 20 years, or both; in addition to the risk of impact of a designation and listing on the SDN/OFAC List in the context of secondary sanctions, which could be disastrous for any banking entity.

All of this has generated a severe scenario of deterrence, over bank compliance and erosion of correspondent banking relationships. Correspondent banks are increasingly reluctant to provide correspondent banking services in certain jurisdictions (such as Venezuela) where the perceived risk of economic sanctions, the other regulatory burden related to anti-money laundering, counter-terrorist financing and/or legal and enforcement uncertainties and the high costs associated with implementing enhanced and effective compliance programs and the potential reputational risk in the event of non-compliance appear to be higher.

Many studies, reports and legal and economic authorities confirm that excessive compliance by banks has become a widespread practice worldwide and that many banks, including correspondent banks, self-impose restrictions beyond those imposed by sanctions, either as part of a risk reduction process, to minimize the possibility of inadvertent breaches or to avoid reputational or other business risks, or as a means of limiting compliance costs. In these circumstances, the loss of correspondent banking relationships is another manifestation of this excessive compliance phenomenon.

In fact, the aforementioned factors and risks, mainly due to the complex, far-reaching and dangerous Economic Sanctions related to Venezuela, seem to promote a policy of de-risking by correspondent banks and, therefore, the reduction or elimination of correspondent banking relationships.

The fear of U.S. Sanctions related to Venezuela creates a deterrent effect that sometimes goes beyond the target of the sanctions themselves (e.g., the Venezuelan Government and its officials), and also affects legitimate collaborators of such targets and even entire economic sectors (such as the financial sectors) and/or the entire Venezuelan economy. As has also been pointed out in numerous studies and reports, it appears that U.S. sanctions related to Venezuela have had more negative than positive effects and have negatively affected the Venezuelan economy in general, including the financial sector, and have even created situations of human rights violations due to lack of access to international financial systems.

Given the circumstances, the loss of correspondent banking relationships is, in effect, a manifestation of over-compliance and fear of sanctions, particularly U.S. sanctions related to Venezuela. All of this, understandably, has impacted banks in terms of enhanced de-risking compliance protocols (which OFAC strongly encourages and expects from banks), over-compliance and loss of correspondent banking relationships, and has also generated a wave of bank account closures to Venezuelans around the world, as discussed below.

No bank in the world wants to be placed on the SDN/OFAC List. Even for a non-US financial institution,

inclusion on the OFAC List can be catastrophic, not least because its assets can be frozen in the US and/or by US persons anywhere in the world, and because many transactions around the world are conducted in US Dollars ("USD"), which further creates a nexus to the US financial system. Any bank will be adversely affected by a secondary sanction, and the risk or fear of the imposition of such sanctions alone has altered how banks operate in terms of compliance - and over-compliance - and in terms of increasingly avoiding participating in any way and at any level - including as a correspondent bank - in transactions that may involve Venezuela.

It is not surprising, in view of the difficulties and costs associated with the application of special comprehensive compliance procedures, and also considering the risk of secondary penalties and/or sanctions, even more in the context of the complex Sanctions Program, that correspondent banks have refused to process transactions and have opted for cutbacks or total abandonment of the provision of correspondent banking services in anything related to the financial sector in Venezuela, or anything related to Venezuela and its citizens, even if, in theory, the primary target of the Sanctions is the Government of Venezuela and the other designated/blocked persons and governmental entities, and not the people of Venezuela.

As a general matter, we will point out: (i) that the Economic Sanctions and/or their impact, even more in respect to high impact sanctions programs such as that of the U.S., remain in full force and effect, with no prospect of being lifted or materially alleviated in the short term. (ii) that the Sanctions against Venezuela and their effects are still in full force and effect, with no prospect of being lifted or materially alleviated in the short term, so that they continue to be a current, real and certain fact or situation; and (iii) that the Sanctions and the reaction of the correspondent banks appear as an external, inevitable or irresistible event not imputable and beyond the control of the parties.

At present moment, the prospects of any imminent material change in policy toward Venezuela and/or a total lifting of U.S. Sanctions related to Venezuela appear unlikely. Despite some calls for the easing of sanctions and the issuance of multiple General Licenses by OFAC (hereinafter also referred to as "GL"), including GL 41 of November 2022 (authorizing Chevron and Chevron joint ventures to negotiate with the Government of Venezuela and PDVSA in connection with oil projects in Venezuela), which involved only a limited change in targeted sanctions, the Sanctions Program remains in force.

This situation appears unchanged even after the recent flexibilization of the Sanctions on October 18, 2023, with OFAC's General License 43 (regarding transactions with the State-owned company Minerven) and General License 44 (regarding the authorization of transactions in the oil and gas sector involving PDVSA and its subsidiaries for a period of 6 months). Despite the partial alleviation of the Sanctions, the U.S. Venezuela-Related Sanctions program *remains robust and in full force*, and currently there are still no prospects of any imminent material change of policy towards the financial sector of the Venezuelan economy and/or a full lifting of the Venezuela Sanctions. The Government of Venezuela, and its entities and instrumentalities, remain blocked entities. The main Executive Orders and also the *Determination* of March 22, 2019, are still in force, and thus the financial sector of the Venezuelan economy remains the target of secondary sanctions.

We set out below a more comprehensive legal analysis supporting the mentioned conclusions.

II. ANALYSIS

A. GENERAL CONSIDERATIONS ON THE INTERNATIONAL ECONOMIC SANCTIONS

To have a better understanding of the conclusions of this memorandum, we consider it relevant to make some preliminary and general comments on the Economic Sanctions, mainly regarding the Venezuela-related sanctions imposed by the U.S. (because these have been the more ample and stringent sanctions with the biggest financial system and banks). We will also make some brief general comments on other international sanctions, such as those imposed by Canada, the UK and the EU regarding to Venezuela.

1. U.S. ECONOMIC SANCTIONS.

1.1. Definitions

In accordance with the Venezuela-related Sanctions determined in the different Executive Orders ("EOs"), it is necessary to keep in mind some key definitions:

i. **"Person"** implies a natural person or a legal person (entity).

ii. **"Entity"** means a company, partnership, association, fund, joint venture, corporation, group, subgroup, or any other type of organization.

iii. **"U.S. Person"** means companies incorporated under the laws of the U.S. or any jurisdiction within the U.S. (including foreign branches), U.S. citizens and foreign nationals with permanent residence in the U.S., but also foreign nationals within the U.S. when transiting or visiting the U.S.

iv. **"Venezuelan Government"** means the Venezuelan State and the Government of Venezuela, and any of its political subdivisions (States and Municipalities), governmental agencies, entities, including the *Banco Central de Venezuela, Petróleos de Venezuela, S.A.* (PDVSA) and its subsidiaries or entities owned or controlled directly or indirectly, or any person owned, controlled or acting by or on behalf of any of the foregoing, including as a member of the Maduro regime.

v. **"The 50% Rule"**. When an EO or OFAC blocks a person or entity (e.g., the Government of Venezuela and/or PDVSA), such blocking also extends to subsidiaries, affiliates, and all companies 50% or more controlled by the initially blocked entity. This is automatic, without the need for new inclusions in the SDN/OFAC List. This is known as such as OFAC's 50% Rule.

1.2. The General Legal Framework for U.S. Sanctions

The economic sanctions programs imposed by the U.S. President and enforced by OFAC cover both persons directly blocked by EOs or placed on the SDN/OFAC List and specific types of prohibited transactions (sectoral or transaction-type sanctions); these sanctions primarily prohibit U.S. Persons" from dealing with these blocked entities or engaging in these prohibited transactions. It should also be noted that some EOs establish the basis and criteria for the imposition of so-called "secondary sanctions", which could result in the inclusion of Non-U.S. Persons on the OFAC List.

In terms of blocking sanctions, and based on various laws, EOs and OFAC designations, numerous persons (individuals, companies and entities) have been blocked or placed on the SDN/OFAC List.

Being a SDN person means that, absent an authorization or license, no U.S. Person may deal with the SDN or SDN property. In other words, all transactions with blocked persons are prohibited for U.S. Persons, and non-U.S. Persons - even if not bound by the primary sanctions - are exposed to secondary sanctions. In addition, all assets of a SDN that are within U.S. jurisdiction or come into the possession of a U.S. Person are blocked. Ownership of the blocked property remains with the target, but the exercise of the powers and privileges - including transfers or transactions - normally associated with the property is prohibited without authorization or license from OFAC.

As for the sectoral/transaction type sanctions, these are not of a personal nature, and do not require inclusion in the SDN; rather, the sectoral nature of these sanctions affects specific types of transactions, as determined by various EOs issued by the U.S. President with respect to Venezuela. In the absence of an authorization or license, no U.S. Person may engage in any of the prohibited transactions.

The scope of these primary sanctions could be expanded through the establishment by EOs of the basis or criteria for the imposition of "Secondary Sanctions", which could materialize through the inclusion of "non-U.S. persons" on the OFAC List, mainly when the persons operate in specific sectors and/or engage in specific conduct, such as materially collaborating with blocked entities. For example, in relation to Venezuela, as explained in more detail below, this occurred with EO 13692 of March 8, 2015, EO 13850 of November 1, 2018, and EO 13884 of August 5, 2019; these being very broad criteria established by the EOs for the imposition of secondary sanctions.

Secondary sanctions can be imposed against any person/company/bank anywhere in the world. Secondary sanctions are not automatically imposed as a matter of law; rather, they are imposed as a matter of policy. In practice, the imposition of secondary sanctions tends to be exceptional, and is a discretionary policy judgment by the U.S. Administration but given the serious consequences of the violation or sanctions and/or OFAC listing, the mere potential risk of imposition of such sanctions has enormous deterrent effects and creates well-known situations of over-compliance in the banking sector.

Along with the general regime of sanctions, there is usually a regime of exceptions to them, when expressly provided for in an EO or when OFAC issues General Licenses, Specific Licenses and/or Guidelines. Regarding Venezuela, OFAC has issued a total of 42 General Licenses, although not all of them are still in force.

Persons who violate the sanctions may also be subject to stiff penalties, including civil fines of up to twice the amount of the transaction on which the violation is based, and criminal fines of up to USD 1,000,000, or, if an individual, imprisonment for up to 20 years, or both. In addition, there is also the risk of inclusion on the SDN/OFAC list. We will discuss this in more detail below and explain how this risk of sanctions has affected the financial system and banking relationships.

1.3. Sanctions Related to Venezuela

Sanctions related to Venezuela have also been implemented mainly through the issuance of

several Executive Orders and a multiplicity of General Licenses, in the context of sectoral sanctions and blocking sanctions, which also include secondary sanctions.

a. Sectoral/Transactional Sanctions

Under the Sectoral Sanctions approach, the EOs and specific "prohibited transactions" relating to Venezuela are as follows:

- EO 13808 of August 24, 2017, which prohibits all transactions relating to, provision of, financing for, and other dealings in the following: 1(a)(i) New debt maturing in excess of 90 days of PDVSA; 1(a)(ii) New debt maturing in excess of 30 days, or new principal, of the Government of Venezuela; 1(a)(iv) Payments of dividends or other distributions of profits to the Government of Venezuela; 1(b) The purchase by a U.S. Person of securities of the Government of Venezuela.

- EO 13827 of March 19, 2018, which prohibits all transactions by U.S. persons that may involve the Petro or any other digital currency, digital coin or digital *token*, which has been issued by, for or on behalf of the Government of Venezuela.

- EO 13835 of May 21, 2018, which prohibits transactions by U.S. persons related to the purchase of any debt owed to the Government of Venezuela, including accounts receivable; and the sale, transfer, assignment or pledge as collateral by the Government of Venezuela of any equity interest in any entity in which the Government of Venezuela has a 50% or greater equity interest.

The restrictions set forth in EOs 13808, 13827 and 13835 only affect those specific transactions and, in addition, only bind and obligate, for purposes of their execution or implementation, persons who qualify as U.S. Persons. However, although non-U.S. persons are not bound by these EOs, they may be subject to secondary sanctions at the discretion of the Secretary of the Treasury and OFAC if they cooperate directly or indirectly in this type of transactions, all of which has had an impact on the global financial/banking sector because practically no bank wants to facilitate these transactions.

b. Blocking Sanctions and Sectors subject to determinations and possible secondary sanctions

The Venezuela Blocking Sanctions are specifically elaborated in EO 13692, dated March 8, 2015; EO 13850, dated November 1, 2018; and EO 13884, dated August 5, 2019. As of today, for example, more than two hundred persons related to the Venezuelan Government have been expressly included in OFAC's SDN list, including PDVSA and several state-owned banks.

EO 13692 of 2015 blocked several officials of the Government of Venezuela and, in addition, established the initial basis for the imposition of secondary sanctions on any person who, among other things, is responsible for democratic deterioration in Venezuela, or has committed human rights violations, or has restricted freedom of expression, or has engaged in corruption, or is a current or former official of the Government of Venezuela; or has materially assisted, sponsored, or provided financial, material or technological support, or goods or services to, or in support of, any blocked person.

In addition, EO 13850 of 2018, laid the groundwork for other secondary sanctions through potential OFAC List listings, in particular persons who contribute to the plunder of Venezuela's wealth, engage in corrupt practices and/or degrade Venezuela's infrastructure and environment. EO 13850 does not contain blocking or sectoral sanctions per se but refers to certain conducts and/or sectors that may justify, at any time in the future, the designation of certain persons as SDNs. The conducts and sectors mentioned by EO 13850 are:

- Being responsible for or complicit in any transaction or series of transactions involving deceptive practices or corruption and the Government of Venezuela.
- Operate in the gold sector of the Venezuelan economy or in any other sector of the Venezuelan economy as determined by the Secretary of the Treasury.

In the context of EO 13850, the Secretary of the Treasury issued three (3) Determinations and, in addition to the gold sector, included (i) the Defense and Security Sector, (ii) the Oil Sector and (iii) the Financial Sector of the Venezuelan economy.

The oil sector was the subject of a Treasury Secretary's Determination on February 28, 2019, and on the same date PDVSA (Venezuela's main state-owned oil company) was included on the OFAC List. Under OFAC's 50% Rule, PDVSA's designation as an SDN automatically included all 50% or more owned subsidiaries of PDVSA, even if they are not expressly included on the OFAC List.

This OFAC designation had the effect of blocking all PDVSA assets in the U.S. and prohibiting all U.S. persons from transacting or dealing with PDVSA or its controlled entities. As for Non-U.S. Persons, these, including all U.S. persons, contractors and collaborating banks of PDVSA, were exposed to sanctions under the aforementioned EO 13850 and the January 28, 2018 Determination, and also based on the subsequent Financial Sector Determination.

Thus, since November 1, 2018 (date of EO 13850) and with greater intensity as of January 28, 2019 (date of the Oil Sector Determination and PDVSA's designation as SDN), all contractors or collaborators of PDVSA (including banks and financial entities) were exposed to sanctions for operating or collaborating in the oil sector, even if they do not qualify as U.S. persons.

The Oil Sector Determination and the inclusion of PDVSA on the OFAC list had a significant impact on the financial system in terms of compliance, overcompliance and banking relations because the oil and gas industry is the largest industry in Venezuela and the Venezuelan economy is significantly intertwined with such economic sector, a sector in which the Venezuelan Government/PDVSA is normally involved. In addition, according to the Venezuelan Constitution of 1999 (Articles 12 and 302), all hydrocarbon deposits within the territory of Venezuela are owned by the State and the oil industry is reserved to the State, and furthermore, when private parties want to participate in business or transactions related to the hydrocarbon industry in Venezuela, the Venezuelan Government tends to be involved at some level.

As confirmed by a press release/statement from the U.S. Treasury Department dated February 28, 2019, the designation of PDVSA as a SDN was made pursuant to EO 13850 "for operating in the oil sector of the Venezuelan economy" and considering that PDVSA is "a primary source of Venezuela's revenues and foreign exchange, to include U.S. Dollars and Euros". In addition, the statement also mentions that the "action to designate PDVSA follows a determination by

Secretary Mnuchin pursuant to EO 13850 that persons operating in the oil sector of the Venezuelan economy may be subject to sanctions."[1]

This also demonstrates that OFAC was prepared to monitor not only transactions in US Dollars, but also in Euros, and basically in any currency worldwide. Thus, the world banking system was on notice of the risks of secondary sanctions for directly or indirectly facilitating transactions involving PDVSA or anything related to the oil sector in Venezuela.

In addition, OFAC Frequently Asked Question ("FAQ/OFAC") #629 appears to confirm that OFAC retained full discretion to target those persons operating in the identified sectors (i.e., gold, defense and security oil, and financial sectors) of Venezuela's economy[2].

In this context, for example, on March 11, 2019, OFAC designated *Evrofinance Mosnarbank,* a Moscow-based bank that is jointly owned by Russian and Venezuelan state-owned companies. This action was taken pursuant to EO 13850, which targets a foreign financial institution that OFAC has determined has materially assisted, sponsored, or provided financial, material, or technological support, or goods or services to or in support of PDVSA, which was previously designated on January 28, 2019[3].

c. The Financial Sector Determination of March 22, 2019, and the inclusion of numerous banks on the OFAC List, and the Risk of Secondary Sanctions to all banks involved in the sector.

Based on EO 13850, the Secretary of the Treasury issued the March 22, 2019, Determination, including the "financial sector" as a risk sector for purposes of the Sanctions. The determination in question contained a broad reference that "any person" determined to "operate in this financial sector" of the Venezuelan economy "shall be subject to sanctions," all of which exposed even more banks to secondary sanctions and complicated banking relationships.

In this context, it is correct that OFAC issued a Determination pursuant to Section 1(a)(i) of EO 13850 designating the financial sector of the Venezuelan economy as "one of the sectors targeted by the Sanctions." Indeed, the EOs and designations issued since 2015, and the 2019 Determinations not only exposed U.S. persons to the risk of primary sanctions violations, but also exposed non-U.S. persons to the imposition of secondary sanctions.

The text of the March 22, 2019, Determination of the U.S. Secretary of the Treasury is expansive:

> *To further address the extraordinary threat to U.S. national security and foreign policy described in E.O. 13850, as amended by E.O. 13857, and in consultation with the Secretary of State, I hereby determine that section l(a)(i) shall apply to the financial sector of the Venezuelan economy. Any person that I or my designee subsequently determines, in consultation with the Secretary of State, to operate in this sector shall be subject to sanctions pursuant to section l(a)(i).*

---

[1] U.S. Department of the Treasury (2019) Treasury Sanctions Venezuela's State- Owned Oil Company PDVSA. Consulted at https://home.treasury.gov/news/press-releases/sm594.

[2] FAQ/OFAC 629 del 1 de noviembre de 2018. Consulted at https://ofac.treasury.gov/faqs/topic/1581.

[3] U.S. Department of the Treasury (2019) Treasury Sanctions Russia-based Bank Attempting to Circumvent U.S. Sanctions on Venezuela. Consulted at https://home.treasury.gov/news/press-releases/sm622.

Thus, anyone operating or collaborating - directly or indirectly - in the financial sector of the Venezuelan economy may be viewed as an extraordinary threat to U.S. national security and foreign policy and may be exposed to secondary sanctions (a designation and inclusion on the OFAC List). Justifiably, this Determination, along with the other EOs regarding Venezuela Sanctions, caused a ripple effect on how financial institutions and banks operate or transact (or refuse to transact) with respect to Venezuela and Venezuelans in general.

It is true that, as a matter of law, neither EO 13850 nor its related Determinations nor the subsequent EO 13884 blocking the Government of Venezuela automatically triggered the issuance of secondary sanctions on all persons contracting and/or collaborating with the Government of Venezuela or PDVSA or all persons operating in the financial sector. In other words, not all banks and financial institutions became blocked persons the day after EO 13850 or the day after the Determination. In theory, under EO 13850, for a private person - even for a contractor or collaborator of the Government of Venezuela or PDVSA - to be understood as blocked, it must (i) be a company 50% or more controlled by the Government of Venezuela or PDVSA or by some of the subsidiaries of these 50% or more controlled entities, all under OFAC's 50% Rule; or (ii) have been expressly and individually included in the SDN/OFAC List[4]. This remains true after the blanket block imposed by EO 13884.

However, as a matter of policy, the above EOs and Determination did (broadly) establish the basis or criteria for the discretionary imposition of secondary sanctions (such as Treasury Secretary designations and OFAC List listings). Thus, the potential risk of secondary sanctions was formalized against all persons operating in the sectors, including the financial sector, all of which appears to have created a ripple effect of deterrence and increased compliance (and over-compliance) by banking, as discussed later in this memorandum.

In addition, in fact, in the context of the EOs and Determinations, numerous banks, both Venezuelan and other international banks, have been included in the OFAC List and/or have been subject to fines for violations of the Sanctions regulations.

For example, on March 22, 2019, OFAC designated and placed on the SDN List several banks for operating in the financial sector of the Venezuelan economy, as well as several additional financial institutions that these institutions control[5]. Such action to designate banks followed the Treasury Secretary's Determination, in consultation with the Secretary of State, that persons operating in Venezuela's financial sector may be subject to sanctions. The following entities were placed on the SDN/OFAC List*: (i) Banco de Desarrollo Económico y Social de Venezuela (BANDES); (ii) Banco Bandes Uruguay, S.A. (BANDES Uruguay); (iii) Banco Bicentenario, Banco Universal, C.A.; (iv) Banco de Venezuela, Banco Universal, S.A.; and (v) Banco Prodem, S.A.*

Additionally, under OFAC's 50% Rule, sanctions against these banks extend to any entity in which any of them owns a 50% or more interest, without the need for express inclusion on the OFAC List.

According to these bank designations, on April 17, 2019, OFAC designated *Banco Central de*

[4] FAQ/OFAC #663 dated on March 22, 2019.

[5] U.S. Department of the Treasury (2019) Treasury Sanctions BANDES, Venezuela's National Development Bank, and Subsidiaries, in Response to Illegal Arrest of Guaido Aide. Consulted at https://home.treasury.gov/news/press-releases/sm636.

Venezuela, under EO 13850, for operating in the financial sector of the Venezuelan economy. This designation further complicated matters in the Venezuelan financial system because the *Banco Central de Venezuela* is the main banking entity that centralized Venezuela's payment system related to the Venezuelan currency. To partially mitigate this OFAC issued several General Licenses, such as GL 16C authorizing certain transactions otherwise prohibited by EO No. 13850, such as transactions related to non-commercial personal remittances.

In summary, as can be seen, and based on various EOs and Determinations, several sectors of the Venezuelan economy, including the financial sector, became economic areas in which parties face potential sanctions for operating or facilitating transactions. In addition, as discussed below, another subsequent EO 13884 of August 2019 would declare the entire "Government of Venezuela" to be a blocked entity for the purposes of the Sanctions, all of which increased the areas of risk to basically all economic areas in which such Government in present.

As noted, OFAC retains discretion to impose secondary sanctions, and the fact that EO 13850 and the Determinations did not automatically create a mass blocking of all persons operating in the risk sectors should not be perceived as an absence of risk to banks facilitating Venezuela-related transactions. In fact, OFAC has demonstrated its willingness to sanction parties involved in those sectors and/or providing material support, including financial/banking support, to designated/blocked Venezuelan entities when it added multiple banks to the SDN/OFAC List.

d. EO 13884 of August 5, 2019. The general blockade of the Venezuelan government and state-owned banks.

On August 5, 2019, the President of the U.S. issued Executive Order 13884. Pursuant to Section 1(a) of EO 13884, all property and interests in property of the "Government of Venezuela" that are in the U.S., that hereafter enter the U.S., or that are or come into the possession or control of any U.S. person "are blocked" and may not be transferred, paid for, exported, removed, or otherwise dealt in.

In addition, section 1(b) of EO 13884 provides that the property of all persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, may also be blocked in the context of secondary sanctions when such persons:

- Have materially assisted, sponsored or provided financial, material or technological support, or goods or services to, or in support of, any person on the OFAC list or persons blocked by EO 13884, such as the Government of Venezuela.
- Are owned or controlled by or have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked under EO 13884.

In addition, pursuant to Section 3 of EO 13884, these prohibitions include: (a) the making of any contribution or provision of funds, goods or services by, to or for the benefit of any person whose property and interests in property are blocked under this order; and (b) the receipt of any contribution or provision of funds, goods or services from any such person.

In other words, EO 13884 had and has a multiple impact, (i) the Government of Venezuela, as a whole, became a blocked person, and all of its assets in the U.S. or under the control or possession of any U.S. person must be blocked; (ii) absent an OFAC exception or authorization,

all U.S. persons are prohibited from engaging in transactions with the Government of Venezuela; and (iii) all other persons in the world-including foreign persons not eligible for OFAC authorization-are prohibited from engaging in transactions with the Government of Venezuela. (ii) absent an OFAC exception or authorization, all U.S. persons are prohibited from engaging in transactions with the Government of Venezuela; and (iii) all other persons in the world - even foreign persons who do not qualify as U.S. persons - risk being subject to secondary sanctions if they aid or cooperate with the Venezuelan government.

OFAC has confirmed in FAQ/OFAC #680 dated August 6, 2019) that, without an OFAC authorization or license, U.S. Persons are generally prohibited from engaging in transactions with the Government of Venezuela, or with persons in which the Government of Venezuela owns, directly or indirectly, a 50 percent or greater interest.

FAQ/OFAC #680 also states that persons who meet the definition of Government of Venezuela and persons who are owned, directly or indirectly, 50 percent or more by the Government of Venezuela are blocked pursuant to EO 13884 of August 5, 2019, "regardless of whether the person appears on the list of Specially Designated Nationals and Blocked Persons (SDN List)."

In this context, it is correct to understand that the Venezuelan Government itself, as well as all state- owned entities and companies and their 50% or more controlled subsidiaries are blocked entities. Accordingly, following EO 13884, all Venezuelan state-owned banks automatically became blocked entities for the purposes of the Sanctions, in addition to the fact that many of these banks were already SDNs under EO 13850.

The blocking effect of EO 13884, however, does not in principle reach private contractors, intermediaries and banks that may operate or collaborate with the Government of Venezuela, unless they are 50% or more controlled by said Government, by PDVSA or by another blocked entity or have been the subject of a Determination and an express inclusion in the OFAC list.

However, under EO 13884 of August 2019, all private banks, both Venezuelan and foreign, are potentially exposed to the risk of imposition of secondary sanctions if they participate in or facilitate, directly or indirectly, any transaction that may involve the Government of Venezuela, all in addition to the already existing risk of imposition of such sanctions on any bank based on previous EOs, such as EO 13850 of 2018 and EO 13692 of 2015, and previous Determinations, such as the Determination of March 22, 2019, regarding the financial sector of the Venezuelan economy.

In fact, by blocking the entire Venezuelan government, EO 13884 further aggravated a situation that was already negatively affecting banks and banking relationships. In addition, the Venezuelan Government tends to be involved in many sectors of the Venezuelan economy, including, among others, the oil and gas industry.

The general blockade of a government of any country is a rare and exceptional measure. It is probably one of the most intense, severe and comprehensive economic sanctions; it is the nuclear bomb of economic sanctions. To this date, for example, only the U.S. has imposed such a complete blockade on the Venezuelan government. Many other countries have imposed sanctions on Venezuela, but those sanctions have been limited to specific individuals, not the entire government.

The Sanctions Program is, in fact, the broadest, most complex and toughest, and seems to have had the greatest impact on the financial system and banking relations.

Additionally, with respect to "secondary sanctions", EO 13884 established very broad criteria for the imposition of such sanctions on any person (including banks) worldwide. Basically, any person or bank that materially assists, provides financial, material or technological support, or goods or services to, or in support of, the Government of Venezuela or any other entity blocked under EO 13884, may be subject to sanctions.

It is true that, in theory, as confirmed by OFAC in FAQ/OFAC #680 of August 6, 2019, the blockade on the Government of Venezuela was not intended to affect Venezuelan companies and private citizens, and in this regard OFAC has also issued several General Licenses allowing transactions - including involving the Government of Venezuela - for humanitarian reasons. These include, among others, transactions involving agricultural products and food, clothing and medicines (as permitted by Section 5(b) of EO 13884 and by OFAC GL 4C); programs of international organizations in Venezuela (GL 20B); telecommunications and mail (GL 24); services and technology related to Internet communications (GL 25); emergency medical services and the provision of other medical services involving the Government of Venezuela (GL 26); support for humanitarian projects, democracy building and environmental protection (GL 29); ports and airports (GL 30A); health care and education (GL 34A); research, prevention, diagnosis or treatment of COVID 19 (GL 39B); export of Liquefied Petroleum Gas (GL 40B); and provision of goods or services for the operation and management by Chevron of its joint ventures with the Government of Venezuela or PDVSA in Venezuela (GL 41). The foregoing has been confirmed by OFAC precedents or criteria in FAQ/OFAC #519 and #665 dated August 6, 2019, as well as OFAC Guidance Related to the Provision of Humanitarian Assistance and Support to the Venezuelan People dated August 6, 2019.

In addition, the sanctions generally do not restrict transactions with private companies, and parties, in theory, can even use the U.S. dollar and the U.S. financial system as their currency. OFAC has confirmed that, with respect to both transactions with private companies and transactions authorized with the Government of Venezuela or PDVSA pursuant to OFAC licenses, U.S. persons may execute such transactions "through the U.S. financial system" (OFAC Guidance Relating to the Provision of Humanitarian Assistance and Support to the Venezuelan People dated August 6, 2019; see also OFAQ/OFAC #519 and #665 dated August 6, 2019). Accordingly, in theory, non-U.S. persons should not be subject to sanctions in these scenarios.

In practice, however, any transactions involving the Venezuelan Government (even permitted transactions) are subject to heightened compliance protocols and over-compliance situations. This is also true in relation to private companies and Venezuelan residents and citizens (even if they are totally unrelated to the Venezuelan Government). Basically, it appears that, in practice, and as a result of the breadth, complexity, and the sanctions and dangers of the U.S. Sanctions related to Venezuela, the jurisdiction of Venezuela has become a risky or toxic jurisdiction, and even being a Venezuelan national is sometimes problematic for purposes of conducting a basic banking transaction and/or maintaining a bank account.

Also, even if EO 13884 is directed at the Government of Venezuela, and not at the generality of Venezuelan companies and individuals, OFAC has expressly stated that it expects banks to

implement strong due diligence protocols[6].

As a result of the intricate, broad and strong Sanctions Program described above, many banks have chosen to avoid transactions involving Venezuela, and therefore the banks surveyed have also suffered significant losses of correspondent banking relationship.

2. OTHER INTERNATIONAL SANCTIONS RELATED TO VENEZUELA

In addition to the U.S., many other countries have imposed economic sanctions in relation to Venezuela, although these sanctions have been more limited and focused on specific individuals related to the Venezuelan Government. This is the case, among others, of Canada, the UK and the EU.

2.1. CANADA'S SANCTIONS

Canada has imposed sanctions on Venezuela, including measures such as an arms embargo, asset freeze, travel ban and other economic sanctions on members of the Venezuelan government and military.

Canada's sanctions related to Venezuela are primarily contained in the Special Economic Measures (Venezuela) Regulations SOR/2017-204 dated 2017-09-22, and were enacted pursuant to special legislation (the Special Economic Measures Act 1992) and for the purpose of implementing the decision of the Partnership formed between Canada and the U.S. on September 5, 2017, regarding the situation in Venezuela and urging its members to take economic measures against Venezuela and responsible persons for the absence of fair and democratic elections and the government's systematic erosion of Venezuela's democratic institutions and its human rights abuses.

In this context, the 2017 sanctions, which have been amended/extended on several occasions, have targeted more than 100 Venezuelan individuals, most of whom are high-level officials of the Maduro regime involved in the actions.

With respect to prohibited dealings and activities, Article 3 of the Special Economic Measures Regulations (Venezuela), provided that it is prohibited for any person in Canada or any Canadian outside Canada to: (a) deal in any property, wherever located, owned, held or controlled by a listed person or by a person acting on behalf of a listed person; (b) enter into or facilitate any transaction in connection with a dealing referred to in paragraph (a); (c) lend any financial or related service in respect of a negotiation referred to in paragraph (a); (d) making any property, wherever situated, available to a listed person or to a person acting on behalf of a listed person; or (e) providing any financial or related service to or for the benefit of a listed person.

As can be seen, the prohibitions include any financial or related services, thus affecting Canadian banks and, in general, other foreign banks that do not wish to contradict Canadian policy[7].

2.2. THE UNITED KINGDOM'S SANCTIONS

[6] For example, the FAQ/OFAC #680 dated on August 6, 2019.

[7] Regulations on Special Economic Measures (Venezuela) (2017); see also information at https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/venezuela.aspx?lang=eng https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/venezuela.aspx?lang=eng).

The UK has also imposed sanctions against Venezuela, applied both during its EU membership and *post-Brexit*, seeking to limit the ability of Venezuelan government officials to access international financial markets and limiting their access to the UK financial system.

Since 2017, and before December 31, 2020, the U.K. sanctions were part of the Venezuela (European Union Financial Sanctions) Regulations 2017 (S.I. 2017/1094)[8].

Currently, and following the UK's exit from the EU, UK sanctions are based on the Venezuela (Sanctions) (Exit from the EU) Regulations 2019[9].

One of the UK's first sanctions against Venezuela was the freezing of assets of several senior Venezuelan officials, including the country's former vice-president. Subsequently, the UK expanded its sanctions to include a ban on the sale of arms to Venezuela and restrictions on the export of items that could be used to repress the civilian population. Thereafter, the British government further tightened its sanctions, notably by imposing an asset freeze on President Nicolás Maduro, and other senior government officials. On August 2, 2022, the Foreign, *Commonwealth* and Development Office updated the UK Sanctions List relating to Venezuela. This current UK Sanctions List contains more than 35 individuals primarily associated with the Government of Venezuela and alleged to be involved in actions that undermine democracy or the rule of law in Venezuela, and who have been involved in the repression of the civilian population or the commission of human rights violations or abuses in Venezuela[10].

The UK Sanctions prohibit financial institutions from engaging in transactions related to sanctioned persons and restricted assets and activities[11].

According to the Part 3 (Finance) Regulation 12 of the Venezuela (Sanctions) (EU Exit) Regulations 2019, for example, a person ("P") must not make funds available directly or indirectly to a designated person if P knows, or has reasonable grounds to suspect, that P is making the funds available. The reference to making funds indirectly available to a designated person includes a reference to making funds available to a person owned or controlled directly or indirectly by the designated person. In addition, Regulation 13 provides that this restriction also includes making funds available to any person for the benefit of a designated person if P knows, or has reasonable grounds to suspect, that P is making the funds available to that person. In addition, Regulation 14 refers to making economic resources directly or indirectly available to a designated person. Next, Regulation 16 provides that a person must not intentionally engage in activities knowing that the object or effect of the activities is, either directly or indirectly- (a) to circumvent any of the prohibitions in regulations 11 to 15, or (b) to enable or facilitate the contravention of any of those prohibitions." Finally, pursuant to Regulation 27, a person must not provide, directly or indirectly, to a person related to Venezuela, financial services in compliance with or in connection with an agreement the object or effect of which is (a) the export of restricted goods; (b) the direct or indirect supply or delivery of restricted goods; (c) making available to a

[8] Consulted at https://www.legislation.gov.uk/uksi/2017/1094/regulation/12/made).

[9] Consulted at https://www.legislation.gov.uk/uksi/2019/135/contents/made; see also athttps://www.gov.uk/government/publications/financial-sanctions-venezuela).

[10] The List is available on https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1095792/Venezuela.pdf

[11] Venezuela (Sanctions) (EU Exit) Regulations 2019; see also *Sanction Scanner. "Sanctions Against Venezuela"* on https://sanctionscanner.com/knowledge-base/venezuela-sanctions-against-venezuela-

person, directly or indirectly, restricted goods or restricted technology, (d) the transfer of restricted technology. All these regulations provide that a person who contravenes any of these prohibitions commits an offense and may be criminally charged and punished by imprisonment or a fine, or both.

2.3. EUROPEAN UNION SANCTIONS

The European Union also has a sanctions regime against Venezuela that was established in 2017 ostensibly in response to reports of the continued deterioration of democracy, rule of law and human rights in Venezuela. This sanctions regime primarily targets individuals allegedly complicit in or responsible for this situation in Venezuela.

The Council of the European Union introduced sanctions against Venezuela on November 13, 2017. Currently, the sanctions include (i) an embargo on arms and material for internal repression and (ii) a travel ban and asset freeze on 55 Venezuelan government officials[12]. Since 2017, the sanctions have been strengthened and updated until November 2022. According to the EU Sanctions Map, the sanctions regarding Venezuela expire in November 2023, but are likely to be renewed.

For example, Article 2 of Council Regulation (EU) 2017/2063 of 13 November 2017 states that it is prohibited: "...b) to provide, directly or indirectly, financing or financial assistance related to goods and technology listed in the Common Military List, including, in particular, grants, loans and export credit insurance, as well as insurance and reinsurance, for any sale, supply, transfer or export of such goods, or for the provision of related technical assistance, brokerage and other services, directly or indirectly, to any person, entity or body located in Venezuela or for use in Venezuela."

Also, the Articles 3 and 7 prohibit providing, directly or indirectly, "financing or financial assistance" related to equipment that may be used for internal repression and/or related technology and software, to any natural or legal person, entity or body located in Venezuela or for use in Venezuela.

Sanctions are an essential tool of the EU's common foreign and security policy and are intended to bring about a change in bad or harmful policies or activities by targeting non-EU countries, including the organizations and individuals responsible.

Although the obligations imposed are binding on EU nationals or persons located in or doing business in the EU, the targets of Sanctions can be and tend to be from outside the EU. As the European Commission notes, Sanctions "are a foreign policy tool, EU sanctions are inherently applied in non-EU countries"[13].

According to the European Union, the sanctions are intended to promote democratic solutions and are targeted, flexible and reversible measures, designed not to harm the Venezuelan population. However, in practice, in addition to the impact they have on the sanctioned individuals,

---

[12] Council Regulation (EU) 2017/2063 November 13, 2017 concerning restrictive measures in view of the situation in Venezuela; see also Council of the European Union on https://www.consilium.europa.eu/en/policies/venezuela

[13] European Commission (2023) Overview of sanctions and related resources, dated on June 30, 2023. Consulted at https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/overview-sanctions-and-related- resources_en

the Sanctionstend to have an impact on the Venezuelan population and the financial sector in general since Venezuela is seen as a complex, risky and/or unattractive jurisdiction, among other things because, in addition to the European Union, many other countries have also imposed sanctions related to Venezuela, in particular the high-impact sanctions implemented by the U.S., as we have explained above.

B. IMPLICATIONS AND IMPACT OF SANCTIONS ON THE BANKING SECTOR

The U.S. sanctions alone, and even more combined with other international sanctions, have had a major impact on banks and other financial institutions worldwide, by making Venezuela a jurisdiction at risk, and therefore imposing costly and complex enhanced due diligence protocols, and even creating over-compliance situations and negatively affecting correspondent banking relationships because most banks (both U.S. and non-U.S.) prefer to avoid negotiating or participating, directly or indirectly, in any transaction that involves, or could potentially involve, not only the Venezuelan Government or any other blocked entity, but also any private company or Venezuelan citizen, due to the serious consequences of the sanctions) prefer to avoid negotiating or participating, directly or indirectly, in any transaction that involves, or could potentially involve, not only the Venezuelan Government or any other blocked entity, but also any private company or Venezuelan citizen, due to the serious consequences that a violation of the sanctions, which may include not only civil and criminal liability for a primary sanctions violation, but also an OFAC listing in the context of secondary sanctions, with consequent monetary and reputational damage.

1. In principle, U.S. economic sanctions only apply to U.S. Persons, but non-U.S. persons are subject to secondary sanctions. Thus, in practice, U.S. economic sanctions can go beyond the U.S. financial system.

As noted before, the Venezuela-related sanctions in principle bind only U.S. persons, including U.S. companies, U.S. individuals and U.S. banks or financial institutions. In theory, as a matter of law, non-
U.S. persons are not subject to these primary restrictions, and in some cases the mere fact that a transactiondoes not involve U.S. persons may be considered sufficient by itself to preclude the application of theprimary economic sanctions.

The term "*U.S. person*" (*U.S. person*), according to the Economic Sanctions regulations, as derived from the aforementioned EOs related to Venezuela, and as also confirmed by the U.S. Code of Federal Regulations (8591.312), means "any U.S. citizen, permanent resident alien, entity organized under the laws of the U.S. orany jurisdiction within the U.S. (including foreign branches), or any person in the U.S." OFAC, for its part, has confirmed that "U.S. Persons" must abide by or comply with the Economic Sanctions[14].

The definition of "U.S. Person" is broad, but in principle does not extend to those entities controlled/subsidiaries of U.S. persons, unless a sanctions program expressly provides otherwise. In any event, in connection with the Sanctions Program, the EOs only state that the term "U.S. Person" will cover "foreign branches" of U.S. incorporated companies.

The definition of U.S. Person, therefore, with respect to the Venezuelan Sanctions program, does

[14] FAQ/OFAC #11 OFAC, dated on February 15, 2015.

not includeany entity organized under the laws of a jurisdiction other than the U.S., such as Venezuela and Antigua and Barbuda, and this would still be the case even if the entity is owned or controlled by a U.S. Person. In fact, the reference to "foreign branches" in the definition refers to unincorporated entities located outside the U.S. that are simply part of another entity incorporated and organized under U.S. law.

With respect to banks, there are other regulations that must also be considered when determining whether a bank qualifies as a U.S. financial institution. According to the definition of U.S. financial institution in the Code of Federal Regulations (Section 591.313), only U.S. financial institutions and their U.S.affiliates and subsidiaries, as well as branches, offices and agencies of foreign financial institutions "located in the U.S. of America," are bound by or subject to economic sanctions. Initially, non-U.S. persons and non-U.S. financial institutions located outside the U.S. are therefore not subject to the Economic Sanctions and are not required to apply them, at least not under U.S. law.

In this context, it is conceivable that the Economic Sanctions only bind "U.S. Financial Institutions, and that any bank that does not qualify as a U.S. Financial Institution is free to conduct transactions in any currency other than the U.S. dollar, even more in the context of non-U.S. financial systems or payment systems.

As a matter of law, there is some truth in that statement, but as a matter of US policy, and with express foundation in the EOs mentioned above, things are different in the face of the risk of secondary sanctionsand the consequent failure or reluctance of banks to engage in transactions involving blocked entities or riskyjurisdictions.

In general, when it comes to processing prohibited transactions and/or transactions of blocked persons, U.S. banks are required to refuse such transactions or block the money if they receive transfers. U.S. financial institutions may not conduct transactions (in any currency) when a prohibited transaction is involved under OFAC economic sanctions. However, even if non-U.S. banks are not directly restricted by the primary sanctions (as U.S. banks are), non-U.S. banks will tend to be overly cautious about engaging in any transaction that would otherwise be prohibited for a U.S. bank, because any non-U.S. bank that collaborates with blocked entities may be subject to secondary sanctions, more in a sector (the financial sector of the Venezuelan economy) that has been expressly singled out by the U.S. Treasury Secretary/OFAC as a sector of the Venezuelan economy that has been expressly singled out by the U.S. Treasury Secretary/OFAC as being a prohibited sector of the Venezuelan economy.US Treasury/OFAC as a risk sector for the purposes ofsanctions (see Determination of March 22, 2019).

In addition, as noted, with respect to Venezuela-related sanctions, multiple EOs (i.e., EO 13692 of March 8, 2015, EO 13850 of November 1, 2018, and EO 13884 of August 5, 2019) established very broad criteria for the imposition of secondary sanctions (which may involve a designation and listing on the OFAC List of a non-U.S. bank), for any participation or collaboration - direct or indirect - in transactions that may involve the Government of Venezuela or a non-U.S. The OFAC List designation and inclusion of a non-U.S. bank), for any participation or collaboration -directly or indirectly- in transactions that may involve the Government of Venezuela or any other blocked entity or prohibited operation, or for participating in the financial sector of theVenezuelan economy, all of which have generated serious risks for non-U.S. financial institutions worldwide.

No bank in the world wants to be included on the SDN/OFAC list. Even for a non-US financial institution an OFAC listing can be catastrophic, not least because its assets can be frozen in the US and/or by US personsanywhere in the world, and because many transactions around the world are conducted in US Dollars, whichalso creates a nexus to the US financial system. Any bank will be adversely affected by a secondary sanction, and the mere risk or fear of the imposition of such sanctions has altered the way banks operate in terms of compliance - and over-compliance - and in terms of increasingly avoiding participating in any way and at any level - including as a correspondent bank - in transactions that may involve Venezuela.

2. Any transaction in U.S. Dollars (USD) worldwide involves the U.S. Financial System.

Another reason why economic sanctions may impact banks around the world is the current integrated global economy. Moreover, the U.S. financial system is one of the most important payment systems in the world and, in addition, the U.S. dollar is a currency that is used in many transactions around the world.

To the extent that an international transaction is conducted in U.S. Dollars and is to be settled throughthe U.S., as the issuing country of the currency, the transaction may require the involvement of a U.S. institution or entity. In fact, all transactions denominated or processed in U.S. Dollars are presumed to involve a U.S. financial institution, whether as a correspondent bank account or otherwise.

OFAC has confirmed the above and stated that "many non-U.S. persons have engaged in violations of OFAC regulations by processing financial transactions (almost all of which are denominated in U.S. Dollars) to or through U.S. financial institutions in connection with business activities involving an OFAC- sanctioned country, region, or person. Although no organization subject to U.S. jurisdiction may be involved in the underlying transaction - such as the shipment of goods from a third country to an OFAC- sanctioned country - the inclusion of a U.S. financial institution in any payments associated with these transactions often results in prohibited activity (e.g., the export or re-export of services from the U.S. to a fully sanctioned country, or trade in goods blocked in the U.S.)"[15]

International transfers in U.S. Dollars are normally processed centrally through the Federal Reserve via the Real Time Gross Settlement System (RTGS), also known as "*Fedwire Funds Service*" or simply *"Fedwire"*. Another avenue for international payments in U.S. Dollars is the *Clearing House International Payments System (CHIPS)*, which is a private system in which U.S. banks also participate.

However, *Fedwire* and *CHIPS* are not the only systems in the world for making international transfers. In fact, virtually every currency in the world has its own payment system or network, usually centralized in central banks or a similar system. For example, in Europe, the European Central Bank (ECB) has a system called the Trans-European Automated Real-time Gross Settlement Express Transfer Express Transfer System (*TARGET2*), which is a kind of European RTGS, facilitating and enabling cross-border payments, with the key currency being the Euro. Similarly, in England, the Bank of England uses a system called *CHAPS* with respect to the pound sterling.

There are many other systems. For example, in China there is the Cross-Border Interbank Payment

[15] A Framework for OFAC Compliance Commitments, published on May 2, 2019, at A Framework for OFAC Compliance Commitments.

System (CIPS), which was established in October 2015 as a payment settlement and clearing system for cross-border transactions using the RBM currency (Renminbi, the official currency of the Republic of China). There is also the Dubai-United Arab Emirates Funds Transfer System (UAEFTS), which is the real-time gross settlement system (RTGS) of the United Arab Emirates, hosted by the Central Bank of the UAE. Malaysia, Thailand and India also have their own RTGS systems, as do Latin American countries.

The use of the Euro and other currencies for international payments has been increasing and, in theory, such international payments/transfers can be made without the intervention of the U.S. dollar or U.S. banks. This is presumably the case regardless of whether the *SWIFT* (Society for Worldwide Interbank Financial Telecommunication) system is used to facilitate transfers. *SWIFT* is merely a messaging system - not a payments system - and is not directly affected by OFAC sanctions. Furthermore, *SWIFT*is a neutral cooperative society operating under Belgian law and is not controlled by OFAC, which also does not impose blocks on specific transactions between private companies solely because of the use ofSWIFT as a messaging system.

In other words, payments in Euros under the *TARGET2* system or payments in another currency using a different payment system do not necessarily imply a connection to the U.S., U.S. banks or U.S. regulators.

However, the fact that a non-U.S. bank wishes to use a payment system other than the U.S. financial system and a currency other than the U.S. dollar does not mean that the non-U.S. bank is immune to U.S. sanctions. Similarly, the fact that a correspondent bank does not consider itself a U.S. financial institution does not mean that such bank is invulnerable or indifferent to sanctions. The risk of secondary sanctions and an OFAC listing persists, even more in relation to a jurisdiction such as Venezuela that has been subject to the most comprehensive, complex and harsh economic sanctions from many countries in the world, especially the U.S. and its Sanctions Program, as explained above. Considering this context, a bank could face the situation of losing its correspondent banks around the world, because the costs and risks associated with transactions involving Venezuela have become too high,and as mentioned, no bank wants to be hit with a secondary sanction by OFAC.

The fear and deterrent effect of the Sanctions Program, at times goes beyond the target of the sanctions itself (i.e., the Government of Venezuela and its officials), and affects legitimate collaborators of such targets and even entire economic sectors (such as the financial sector) and/or the entire economyof the country. As numerous studies and reports have also pointed out, it appears that US sanctions against Venezuela have had more negative than positive effects and have negatively affected the Venezuelan economy in general, including the financial sector, and have even created situations of human rights violations due to lack of access to international financial systems.

3. Violation or circumvention of economic sanctions could result in serious consequences and penalties.

a. Risk of inclusion in the OFAC List

As noted, one of the main risks and consequences of a direct or indirect sanctions violation by a financial entity is the designation of such entity and its inclusion on OFAC's Specially Designated Nationals and Blocked Persons List (the SDN/OFAC List) which could be devastating to such

entity.

So far, several banks have been included in OFAC's list for operating in the financial sector of the Venezuelan economy, being controlled by the Venezuelan Government or collaborating with the Venezuelan Government or other Venezuelan blocked entities. Both Venezuelan and foreign banks have been targeted by OFAC.

For example, as mentioned, this has been the case for several Venezuelan banks designated under EO 13850, such as: *Bandes, Bandes Uruguay, Banco Bicentenario, Banco de Venezuela, Banco Prodem*, and even the *Banco Central de Venezuela*. This blocking effect, according to OFAC's 50% rule, extends to any entity in which one or more of them owns an interest equal to or greater than 50%. Likewise, since the general blockade of the Venezuelan Government by EO 13884, any other current or future state-owned company is automatically considered a blocked entity, without the needfor express inclusion in the OFAC List.

In addition, OFAC also designated as SDN a Moscow-based financial institution (Evrofinance Mosnarbank), demonstrating that OFAC could sanction foreign banks that provide material supportto designated/blocked Venezuelan entities.

Being an SDN Person (by direct designation) or a Blocked Entity (by being part of, or controlled by, an SDN or other Blocked Entity), means that, in the absence of an authorization or license, no U.S. Person, wherever located, may deal with, or deal with assets of, the SDN, and that all assets of an SDN within U.S. jurisdiction or that come into the possession of a U.S. Person will be blocked or frozen. In addition, any non-U.S. Person dealing or collaborating with a blocked SDN/person will be exposed to the risk of secondary sanctions, which in turn may result in such collaborator beingplaced on the SDN/OFAC List. Understandably, this is a risk that, in view of its potentially disastrous consequences, most people - including banks around the world - would prefer to avoid.

b. Risk of civil and criminal penalties

Another relevant risk of Sanctions violations is the imposition of civil and criminal penalties, which can affect both companies (and their officers and/or directors) and individuals. Most economic sanctions programs expose violators to these types of consequences.

For example, violations of U.S. sanctions relating to Venezuela under the International Emergency Economic Powers Act (IEEPA), which is contained in Title 50 of the U.S. Code ("U.S.C."), canexpose U.S. and foreign persons to civil and criminal penalties. Defendants face civil penalties of up to $250,000.00 (or the equivalent amount in U.S. Dollars when adjusted for inflation, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990) or "an amount that is twice the amount of the transaction that forms the basis of the violation"[16] In addition, violators can also face criminal fines of up to USD 1 Million or up to 20 years imprisonment for willful violations[17].

Similarly, the UK Sanctions provide for similar sanctions. For example, the Venezuela (Sanctions)

[16] 50 U.S.C. § 1705; Guidelines for the application of economic sanctions, 31 C.F.R. App'x A to Pt. 501.

[17] 50 U.S.C. § 1705; see also U.S. Congress, Enforcement of Economic Sanctions: An Overview, dated on March 18, 2022

(Exit from the EU) Regulations 51 of 2019 provide that a person who commits an offence under the Regulations by virtue of any provision of Part 3 (Finance) or Regulation 38 (finance: Licensing offences), is liable "(a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both); (b) on summary conviction in Scotland, to imprisonment fora term not exceeding 12 months or a fine not exceeding the statutory maximum (or both); (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a finenot exceeding the statutory maximum (or both); (d) on conviction on indictment, to imprisonment fora term not exceeding 7 years or a fine (or both)."

In practice, banks have been subject to fines for violations of U.S. sanctions related to Venezuela. For example, on May 30, 2022, OFAC announced a settlement with Banco Popular de Puerto Rico (BPPR), a Puerto Rican bank with branches in Puerto Rico and the Virgin Islands. BPPR agreed to pay USD 255,937.86 as a penalty to settle its potential civil liability for various apparent violations of the Venezuela Sanctions Regulations for processing transactions totaling USD 853,126.00 on behalfof two individuals who were low-level employees of the Government of Venezuela. The settlement amount reflects OFAC's determination that the apparent BPPR violations were not serious and were voluntarily disclosed[18].

As legal authors have recently noted, "OFAC continues to rigorously enforce sanctions against Venezuela and Cuba despite the softening of the Biden administration's policies toward both countries"[19].These authors note that, with the BPPR settlement, OFAC surprised industry participants by taking action against a financial institution for dealing with low-level government employees who meet OFAC's definition of the government of Venezuela, noting that these actions serve as a wake-up call to financial institutions and other companies to conduct due diligence ontheir Venezuelan customers to confirm that such individuals are not blocked by virtue of their employment status.

In addition, these authors also confirm that "non-US companies that use US financial services - directly or indirectly - must comply with US sanctions" and that OFAC's enforcement actions "reaffirmed its desire to penalize non-US companies that use US financial services". They also correctly point out that "transactions involving U.S. Dollars and U.S. Dollar accounts located abroad generally originate in or are cleared to through the U.S., bringing such transactions within U.S. jurisdiction, even when they otherwise occur entirely outside the U.S. and without the involvement of U.S. persons"[20].

In the same trend, on October 18, 2022, OFAC issued a "Finding of Violation" against Nodus International Bank, Inc. ("Nodus") another international financial institution located in Puerto Rico, forviolating the Venezuelan Sanctions Regulations and the Reporting, Sanctions and Procedures Regulations (RPPR). According to OFAC, the violations related to Nodus' willful self-disclosure of three unauthorized transactions totaling $50,271.29 USD in which an individual on OFAC's List of Specially Designated Nationals and Blocked Persons had an interest (the individual was added to OFAC's List in 2017). The RPPR violations reflected Nodus's failure to maintain complete and accurate records related to its handling of blocked assets and its inaccurate reporting of blocked assets to OFAC, but also considered Nodus's voluntary disclosure and compliance

[18] OFAC Enforcement Statement dated May 27, 2022 at https://ofac.treasury.gov/media/923401/download?inline.

[19] Morrison Foerster, U.S. Sanctions Enforcement: 2022 Trends and Lessons Learned, dated March 6, 2023, at https://www.mofo.com/resources/insights/230306-us-sanctions-enforcement-2022.

[20] Morrison Foerster, U.S. Sanctions Enforcement: 2022 Trends and Lessons Learned, dated March 6, 2023, id.

commitments[21].

Also, to note that OFAC maintains a strong enforcement policy with respect to all sanctions programs, including sanctions related to Venezuela which since 2015 have been expanded, and is still in full force and effect, and in this regard OFAC tends to impose many fines totaling millions of USD each year. By way of illustration, in relation to the entire US sanctions program worldwide, in 2021 OFAC imposed a total of USD 20,896,739.22 in fines in the context of 20 sanctions, settlements or findings of violations. In 2022, the total amount of fines increased to USD 42,664,006.65 in the context of 16 sanctions, settlements or findings of violations, and so far in 2023 (as of June 20, 2023) the total amount is USD 556,529,304.18 for 9 sanctions and settlements[22].

Many other banks around the world have also been fined in connection with violations of other U.S. sanctions programs, and banks are generally aware that breaching sanctions is a serious offense, sothey often implement risk mitigation policies and engage in over-compliance, which adversely affectscorrespondent banking relationships. I will discuss this further below. As an example of other banks that have been subject to fines, in 2014 French bank BNP Paribas SA agreed with OFAC to pay USD963 Million as part of a combined USD 8.9 Billion settlement with US federal and state government agencies to resolve its potential liability for apparent violations of the US Sanctions Regulations against Sudan, Iran, Cuba and Burma[23]. In 2015, OFAC also announced another Settlement with Crédit Agricole Corporate and Investment Bank in the amount of USD 329,593,585.00 for violations of the Cuba, Sudan and Burma sanctions programs[24] and in the same year another Settlement was reached between OFAC and Commerzbank AG in the amount of USD 258,660,796.00 in connection with violations of the Sanctions regulations against Iran, Sudan and Burma[25].

The imposition of fines on banks and other entities for non-compliance with U.S. economic sanctionshas been a constant over the last decade. To mention another recent case from 2023, British American Tobacco (BAT) was fined by OFAC and a USD 508 million settlement agreement was reached to resolve its apparent violations of U.S. sanctions on North Korea. While this settlement is the largest ever reached by OFAC with a non-financial institution, the case involved the shipment of more than $250 million in profits from a North Korean joint venture through U.S. financial institutions using designated North Korean banks and various intermediaries. BAT's Singapore subsidiary also exported tobacco to the North Korean Embassy in Singapore through 2017, using unwitting or unwitting U.S. banks to receive or process these payments[26].

Considering all the above, it seems obvious why banks and financial institutions are overly cautious about their correspondent banking relationships, especially considering exemplary cases such as thosementioned above.

4. International economic sanctions, especially U.S. sanctions related to Venezuela, are very complex and risky, and impose extreme and costly "compliance" protocols on

[21] OFAC Enforcement Statement dated October 18, 2022 at https://ofac.treasury.gov/media/928941/download?inline.

[22] OFAC Enforcement Information at https://ofac.treasury.gov/civil-penalties-and-enforcement-information .

[23] OFAC-BNP Paribas Settlement Agreement dated June 30, 2014, at https://ofac.treasury.gov/media/13521/download?inline

[24] U.S. Department of the Treasury (2022). Consulted at https://ofac.treasury.gov/media/12381/download?inline.

[25] U.S. Department of the Treasury (2022) Consulted at https://ofac.treasury.gov/media/12311/download?inline.

[26] OFAC press release dated April 25, 2023 at https://home.treasury.gov/news/press- releases/jy1441)

banks. In addition, many banks tend to engage in "over-compliance."

In order to mitigate the risk of non-compliance with U.S. sanctions, given their increasing complexity, some financial institutions have avoided doing business with Venezuelans and/or their affiliates altogether. In addition, where financial institutions have not completely ostracized Venezuelans or their affiliates, they require them to undergo extensive due diligence or excessive compliance procedures. On the other hand, some financial institutions find doing business with Venezuelan interests unattractive because of the additional expense and resources needed to perform the required enhanced due diligence.

This statement correctly reflects an important effect of the economic sanctions, especially the U.S. sanctions related to Venezuela, in that in order to keep up with the complex U.S. sanctions and try to avoid any violations - direct or indirect - most banks would have to implement complex and enhanced compliance protocols. Indeed, OFAC expects financial institutions to do so, and even then, there is no guarantee that a violation will always be avoided and/or that OFAC will not use its discretion to impose secondary sanctions orfines.

First, we note the Venezuela Sanctions Program is a very comprehensive, multifacetedand complex legal framework. With 7 Executive Orders, 3 Determinations, 42 OFAC General Licenses, several OFAC Guides, dozens of FAQ/OFAC and many related laws/statutes, the Sanctions Program is arguably the most complex sanctions program in the world. As some authors have commented, the Sanctions Program "has possibly surpassed Iran and Russia for the dubious distinction of being the most complicated program administered by OFAC."[27]

As Author *Pierre-Hugues Verdier* has also commented*,* economic and financial sanctions have become one of the most prominent instruments of U.S. foreign policy, and one of the main reasons why banks and financial institutions over-comply with them is legal uncertainty and uncertainty in their application. This is sometimes the result of complexity and/or unclear boundaries in the regulation and enforcement of economicsanctions. Since economic sanctions are mostly drafted in broad and flexible terms, it is sometimes not possible to clearly determine whether or not more complex transactions are prohibited[28].

In addition, the consequences of any sanctions violation against Venezuela are high impact, and include costly civil fines and criminal penalties, including imprisonment, or both, and even OFAC listing, which could be detrimental to any bank.

In this context, it is not surprising that, in order to try to circumvent sanctions, banks must implement special comprehensive compliance procedures. However, in view of the difficulties and costs associated withthis and considering the risk of sanctions and/or secondary sanctions, putting such proceduresin place is a heavy task that not all banks are willing, or able, to undertake. Moreover, in this context, situations of over-compliance are common, as well as the refusal or abandonment of banks to participate in such a complex context, which may result in a kind of discrimination against Venezuela and its citizens, even if, in theory, the people of Venezuela are not the target of the Sanctions, although in practice they are affected because

---

27 Morrison Foerster, OFAC *Sanctions Venezuela's National Development Bank*, on March 25, 2019, at https://www.mofo.com/resources/insights/190325-ofac-sanctions-venezuela-bank.

28 [28] Pierre-Hugues Verdier, Sanctions Overcompliance: *What, Why, and Does It Matter?, North Carolina Journal of International Law*, vol. 48, p. 471, 477 y 479 (2023)

many people, including financial institutions, do not want to do business in Venezuela or be associated with it.

With respect to compliance procedures, OFAC has stated categorically that banks must implement strict compliance procedures to avoid or mitigate risks. For example, OFAC has generally held that all financial service providers are responsible for ensuring that they do not engage in unauthorized transactions prohibited by OFAC sanctions, such as engaging in prohibited transactions with sanctioned jurisdictions."[29]. In this Enforcement Release, OFAC also noted that to mitigate risks, companies should develop tailored, risk-based sanctions compliance programs, also stating that OFAC strongly recommends a risk-based approach to sanctions compliance because there is no single compliance program or solution suitable for every circumstance or business.

Similarly, in connection with Venezuela-related sanctions, OFAC has expressly stated in FAQ/OFAC #680 in the context of EO. 13884, that "as a general matter, OFAC expects financial institutions to conduct due diligence on their own direct customers (including, for example, their ownership structure) to confirm that those customers are not persons whose property and interests in property are blocked"[30]. To make matters even more daunting, OFAC also indicated in the same FAQ/OFAC#680 that for other types of transactions where a financial institution is acting solely as an intermediary and does not block transactions involving a sanctions target, OFAC will consider the totality of the circumstances surrounding the bank's processing of the transaction to determine what, if any, regulatory response is appropriate.

Notably, some of the statements contained in FAQ/OFAC #680 were repeated, verbatim, in the 2022 settlement between OFAC and Banco Popular de Puerto Rico (BPPR) for various apparent violations of the Venezuela Sanctions Regulations in the processing of transactions[31].

In addition, in OFAC's 2022 "Violation Opinion" against Nodus International Bank, Inc. ("Nodus") for violating the Venezuela Sanctions Regulations, OFAC emphasized "the importance of financial institutions properly maintaining blocked assets and records and submitting accurate reports to OFAC. In addition, financial institutions should ensure that they receive all necessary licenses from OFAC before dealing in blocked assets and clearly communicate OFAC's requirements across an institution's compliance and business lines."[32]

In addition, as general preventive guidance and in the context of settlement agreements, OFAC requires"Compliance Undertakings" from financial institutions. On May 2, 2019, OFAC published A Framework for OFAC Compliance Undertakings (the "Framework Undertakings") to inform organizations subject to U.S. jurisdiction, as well as foreign entities OFAC's perspective, about the essential components of a sanction's compliance program. The Framework Commitment is a lengthy and comprehensive document showing that OFAC "strongly encourages" organizations

---

[29] OFAC Enforcement Release of October 11, 2022, OFAC Settles with Bittrex, Inc. por 24.280.829,20 USD in connection with apparent violations of multiple sanction programs at https://ofac.treasury.gov/media/928746/download?inline#:~:text=

[30] OFAC FAQ # 680 dated on November 5, 2019, updated on January 09, 2023, at https://ofac.treasury.gov/faqs/topic/1581 .

[31] OFAC Enforcement Statement dated on May 27, 2022 at https://ofac.treasury.gov/media/923401/download?inline.

[32] OFAC Enforcement Statement dated on October 18, 2022 at https://ofac.treasury.gov/media/928941/download?inline.

and entities to implement "robust and effective compliance programs."[33]

This Framework of Commitments confirms that OFAC expects entities, including financial institutions, to "employ a risk-based approach to sanctions compliance by developing, implementing, and regularly updatinga sanctions compliance program (SCP)." According to this OFAC document, while each risk-based SCP will vary based on a few factors-including firm size and sophistication, products and services, customers and counterparties, and geographic locations-each program should be based on and incorporate at least fiveessential components of compliance: (1) management commitment; (2) risk assessment; (3) internal controls; (4) testing and audits; and (5) training. The Framework also outlines how OFAC can incorporate these components into its assessment of apparent violations and resolution of investigations leading to settlements.

To illustrate the complexities and pressure these requirements place on banks, I will note that in the "Finding of Violation" issued by OFAC on October 18, 2022 against Nodus International Bank, Inc. ("Nodus") issuedby OFAC for violating the Venezuela Sanctions Regulations, Nodus was able to avoid sanctions because it made a voluntary disclosure and agreed to implement "numerous remedial measures," including, among others, hiring experienced OFAC compliance experts to provide training to all Nodus employees, hiring in- house counsel to handle sanctions matters, updating its recordkeeping procedures, and having its software vendor implement user controls that require Compliance Department approval for any action affecting a blocked account[34].

In addition, there is also Section 31 of the U.S. Code of Federal Regulations ("CFR") which contains Appendix A to Part 501 relating to Guidelines for the Enforcement of Economic Sanctions. These Guidelines,among other things, provide that among the general factors to be considered in determining the appropriate administrative action in response to an apparent sanctions violation The criteria to be considered in determining the amount of sanctions imposed by a Subject Person and, in the event a civil money penalty is imposed, in determining the appropriate amount of such penalty, are the willfulness or recklessness of the Subject Person in violating, attempting to violate, conspiring to violate, or causing a violation of the Act, the awareness of the conduct in question, and the "existence, nature and adequacy of the Subject Person's risk- based OFAC compliance program at the time of the apparent violation," as well as the "remedial response"or remedial actions taken by the person in response to the apparent violation[35].

All the foregoing, in our opinion, demonstrates that OFAC expects banks and other financial institutions to develop and implement robust, comprehensive and effective compliance programs, and to routinely update the same, in the context of nothing less than the most complicated, far-reaching and dangerous sanctions program (the U.S. Venezuela-Related Sanctions.) Venezuela-Related Sanctions), and all this to avoid any direct or indirect violation of the Sanctions, with no guarantee of success and still being subject to OFAC's discretion in imposing

---

[33] OFAC, A Framework for OFAC Compliance Commitments, dated on May 2, 2022 https://ofac.treasury.gov/media/16331/download?inline; see also OFAC Press Release dated May 2, 2019, stating that the U.S. "continues to enhance our sanctions programs" and that "OFAC developed this framework in our ongoing effort to strengthen sanctions compliance practices across the board," at https://home.treasury.gov/news/press-releases/sm680).

[34] OFAC's October 18, 2022 Enforcement Statement at https://ofac.treasury.gov/media/928941/download?inline).

[35] 31 CFR Part 501, Appendix A, Article 31 CFR Part 501 at https://www.ecfr.gov/current/title-31/subtitle-B/chapter-V/part-501/appendix-Appendix%20A%20to%20Part%20501

severe sanctions and even a possible inclusion on the OFAC List, and this is a risk that is present for all banks or institutions participating in a transaction, including correspondent banks. Understandably, and in addition to the costs associated with this type of compliance program (which not all banks can afford), these risks of serious sanctions and/or secondary sanctions is a gamble that not many banks are willing to take these days.

In this context, it has been noted that "overcompliance has become a widespread practice worldwide"[36]. In the Report, the Author defines over-compliance as "self-imposed limitations that go beyond the restrictions imposed by sanctions, either as part of a risk reduction process, to minimize the possibility of inadvertent violations or to avoid reputational or other business risks, or as a means of limiting compliance costs."

5. Loss of correspondent banking relationships as another manifestation of over-complianceand fear of Sanctions

In general terms, correspondent banking relationships refer to agreements or relationships between banks toprovide payment services to each other and are often used to make cross-border payments, thus playing an important role in the international financial system. As noted by the Bank for International Settlements, correspondent banking typically involves "an arrangement whereby a bank (correspondent) holds deposits owned by other banks (respondent) and provides payment and other services to those respondent banks."[37].

Correspondent banking could include various types of services, such as international funds transfers, cash management services, check clearing, loans and letters of credit, foreign exchange services, among others[38].

International sanctions, especially the very complex, comprehensive and far-reaching U.S. sanctions related to Venezuela, which also provide for harsh civil and criminal penalties and even OFAC listings for direct or indirect sanctions violations, have created a serious scenario of deterrence, bank over-compliance and the consequent erosion of correspondent banking relationships.

This is further supported by numerous studies, reports and authorities. These authorities also support the proposition that even Venezuela's entire economy has been negatively affected as a result of the economic sanctions.

Regarding bank default and the loss of correspondent banking relationships, for example, some authorshave stated that financial institutions "continue to face a significant risk of indirect sanctions through the so- called correspondent banking services they provide to other banks". Correspondent banks act as intermediaries in cross-border transactions between banks that lack formal links and rely on "respondent" banks to conduct customer due diligence. They run the risk of facilitating illicit

---

[36] United Nations, Secondary Sanctions, Civil and Criminal Sanctions for Circumvention of Sanctions Regimes and Excessive Compliance with Sanctions, Report of the Special Rapporteur on the negative effects of unilateral coercive measures on the enjoyment of human rights, Alena F. Douhan, of 15 July 2022, p. 5).

[37] Report of the Committee on Payments and Market Infrastructures, Bank for International Settlements, on Correspondent Banking, dated on July 16, 2016, p. 9, at https://www.bis.org/cpmi/publ/d147.pdf ; see also U.S. Congress, Overview of Correspondent Banking and "De-Risking" Issues, dated on April 8, 2022

[38] Bank for International Settlements report on correspondent banking, 2016, id. p. 9.

payments if respondent banks knowingly or unknowingly fail to comply with sanctions."[39].

This author also points out that correspondent banks do not usually have direct relationships with the underlying parties in a transaction and that their clients, the respondent banks, conduct clients checks, including the determination of beneficial owners or sources of funds, all of which create risks for correspondent banks. The Author also refers in this context to statements made by Eric Li, director of research at Coalition Greenwich, a research firm owned by S&P Global, who stated that correspondent banks sometimes unwittingly facilitate the unwitting facilitation of customer information, including the determination of beneficial owners or sources of funds. In this context, the Author also refers to statements by Eric Li, director of research at *Coalition Greenwich*, a research firm owned by *S&P Global*, who stated that correspondentbanks sometimes unintentionally facilitate money transfers for sanctioned entities, "the risk is real, and it's probably going to affect, at some point, every single bank on this planet."

The risk also tends to generate a policy of de-risking by correspondent banks and, therefore,the termination of correspondent banking relationships. By de-risking practices, we mean the decision takena priori by a financial institution to refuse to enter business relationships with potential customers or to terminate existing business relationships with existing customers on the grounds that these potential or existing customers belong to a category of persons that the financial institution alleges to be linked to excessive risks"[40].

Due to the uncertainty and risk of incurring a violation of economic sanctions, even more in regard to the complex sanctioning programs, and in view of other factors such as the costs of implementing efficient compliance procedures and reputational dangers, many correspondent banks have chosen to reduce or eliminate their correspondent relationships, especially in risky jurisdictions such as Venezuela. As noted in the Bank for International Settlements Report, many banks that provide correspondent services "are reducing the number of relationships they maintain and establishing few new ones. As a result, some banks surveyed may be at risk of becoming isolated from international payments networks.

This Report confirms the trend to cut back on the number of correspondent banking relationships, especially for those banks surveyed that do not generate sufficient volumes to recover compliance costs and/or "are located in jurisdictions perceived as too risky". In particular, the Report further notes that some correspondent banks "are increasingly reluctant to provide correspondent banking services in certain currencies where the perceived risk of financial penalties, the regulatory burden related to anti-money laundering and combating the financing of terrorism, or the uncertainties related to the implementation of these requirements and the potential reputational risk in the event of non-compliance appear to be higher." Inaddition, "there are indications that US Dollar correspondent banking activities are increasingly concentrated with US banks and that non-US banks are increasingly withdrawing from providing services."

There are many other specialized studies and articles about the "withdrawal" or "retreat" of

---

39 *Sanne Wass, Banks face hidden sanctions risk amid complex correspondent banking system,* dated on April 13, 2022 at https://www.spglobal.com/marketintelligence/en/news-insights/latest-news- headlines/banks-face-hidden-sanctions-risk-amid-complex-correspondent-banking- system-69743257)

40 ABE Op 2022 01 on the detrimental impact of unjustified "de-risking" practices, EBA Op 2022 01, which highlights that "at the EU level, de-risking, especially if it is unjustified, has a detrimental impact" and "when the risk of respondent banks in a Member State is being reduced, this may also affect the stability of the financial system of that Member State (p. 2).

correspondent banking relationships that confirm the above and cite economic sanctions as one of the key factors in such withdrawal because offshore banks in the region facilitate international transactions from around the world"[41] and concluding that, "as expected, the U.S. economic and commercial sanctions are an important determinant of changes in CBR activity."

Furthermore, according to studies and reports, the negative consequences of the Economic Sanctions and the consequent bank overcompliance and loss of correspondent banking relationships, have had repercussions not only on banks or isolated sectors, but on the Venezuelan economy in general, and some even argue that it has affected basic human rights, both economic and other vital rights such as access to medicines.

In August 2019, UN rights chief Michelle Bachelet stated that the U.S. sanctions imposed on Venezuela in 2017 and 2019 were too broad and were negatively affecting the Venezuelan people, including about their economic rights in the context of excessive compliance by banks to avoid the risk of being sanctioned. Among other things, Bachelet referred to the potentially severe impact on the human rights of the Venezuelan people of the new set of unilateral sanctions imposed by the U.S. this week. The sanctions are extremely broad and do not contain sufficient measures to mitigate their impact on the most vulnerable sectors of the population. There is a significant body of evidence demonstrating that broad unilateralsanctions may end up denying people's fundamental human rights, including their economic rights, as wellas the rights to food and health, and could hinder the delivery of humanitarian assistance"[42].

Similarly, Author Douhan (2022), appointed and commissioned by the United Nations Human Rights Council,to study the negative impact of unilateral coercive measures on the enjoyment of human rights, warnedabout the "worrying practices of unilateral sanctions enforcement and non-compliance in the banking sector, as an effect of sanctions imposed by several States", which have also had the effect of "prohibiting access tovital health care and necessary treatment for Venezuelan nationals"[43] . This Report also notes that "sanctions on oil, gold, mining and other industries caused the deepest recession in modern history, contracting Venezuela's economy by 80%, with an inflation rate of around 2,300% by 2020".

This Report also analyzes the refusals in the processing of transactions that take place even in cases in which the transactions are not prohibited by the Sanctions or are expressly authorized by the EOs or by OFAC Licenses for humanitarian reasons (such as LG 4C- which authorizes transactions related to food and other agricultural products and medicines). In this regard, the Report refers to the case of the BANDES that on February 11, 2019, was unable to cancel the debt of 4,851,252.79 Euros of medical patients, due to the "refusal of the intermediary banks to make operations coming from Venezuela".

Similarly, the Reports mention that PDVSA requested the same payment through the financial entity

---

[41] Michaela Erbenová et al, The Withdrawal of Correspondent Banking Relationships: A Case for Policy Action, June 30, 2016, confirming that "economic and trade sanctions" are among banks' considerations when deciding to withdraw from correspondent banking relationships (CBRs) and further noting that the withdrawal of CBRs "has reached critical levels" in some affected countries, id, p 5; see also Trevor Alleyne et al, Loss of Correspondent Banking Relationships in the Caribbean: Trends, Impact, and Policy Options, IMF Working Paper, August 2017, p 16, 19, 22, highlighting that economic sanctions are one of the main drivers that have contributed to global banks' decisions to end their CBRs.

[42] Statement by Michelle Bachelet on the recent sanctions imposed on Venezuela, dated August 8, 2019, at https://www.ohchr.org/es/2019/08/statement-michelle-bachelet-recent-sanctions-imposed-venezuela.

[43] Communication from the Special Rapporteur, dated 12 July 2021, in https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile.?gId=26509

Novo Banco of Portugal, but Novo Banco refused to process the payments, even though they were for critical health care for chronically ill patients. (In this case, in our opinion, the refusal may have been justified because, although OFAC GC 4C and 26 and EO 13884 authorized transactions involving drugs and medical services in connection with the Government of Venezuela, those regulations expressly excluded BANDES and PDVSA, so that non-U.S. banks could have been exposed to secondary sanctions. However, it is true that there are often over-compliance situations where transactions are permitted by OFAC, but still banks do not want to take any risk, and therefore prefer to avoid processing the transaction solely because it is related to Venezuela).

In another Report devoted to the impact of secondary sanctions, Author Douhan (2022) referred to the trend of "excessive risk reduction by banks and other financial actors," noting also that this "excessive compliance"includes, among other things, refusing to engage in authorized transactions; discouraging authorized transactions by requiring burdensome documentation, charging higher fees or additional fees, or imposing delays; freezing assets that are not subject to sanctions; and denying individuals the ability to open or maintain bank accounts or conduct transactions because they are nationals of a sanctioned country[44]. The Report also states that "risk mitigation policies are responsible for widespread non-compliance with unilateralsanctions, particularly in the financial sector."

In addition, this Report also noted that "companies often decide to discontinue all business with a sanctionedcountry, entity or individual, or with a country in which specific entities or individuals are sanctioned, even when the primary sanctions regimes permit certain activities or provide for humanitarian exemptions. A company may make this decision because of a perceived commercial benefit or because essential intermediaries, such as its bank, may refuse to engage in relevant transactions."

The final conclusions of the report are categorical:

> *Fear of being subject to secondary sanctions or civil suits and criminal sanctions leads to excessive and widespread compliance with primary sanctions to minimize the risks of unintentional violations arising from their complexity, lack of clarity, frequent changes and extraterritorial application in order to minimize reputational risks or due to the high cost of due diligence in relation to compliance.*
>
> *The increasing use of secondary sanctions also creates the prospect of excessive enforcement.*
>
> *The use or threat of secondary sanctions or civil and criminal sanctions constitutes a de facto new form of retaliation against individuals, States and companies deemed to be circumventing unilateral sanctions regimes.*

Along with the studies and reports, another report published by the Washington Office on Latin America (*WOLA*), conducted by a Venezuelan economist, Luis Oliveros, found that, although Venezuela's economic crisis began before the first US sectoral sanctions were imposed in 2017, these measures "contributed directly to its deep decline, and to a further deterioration of the quality of life of Venezuelans." Some of the findings include (i) that as of 2020 US sanctions have caused

[44] United Nations, Secondary Sanctions, Civil and Criminal Sanctions for Circumvention of Sanctions Regimes and Excessive Compliance with Sanctions, Report of the Special Rapporteur on the negative effects of unilateral coercive measures on the enjoyment of human rights, Alena F. Douhan, 15 July 2022

the Venezuelan state to lose between USD 17 and 31 Billion in revenues, most of them related to the decline in oil revenues; (ii) that U.S. sanctions are affecting the most vulnerable in Venezuela, because while U.S. sanctions (iii) a trend of risk aversion has led banks and financial institutions operating in Venezuela or with Venezuelan institutions to over-comply with U.S. sanctions, all of which has led to an increase in the vulnerability of Venezuelans. All of this has had an impact on Venezuelan society and, as a result, human rights groups, humanitarian organizations and private companies have had their bank accounts closed and legitimate transactions denied or frozen for extended periods of time[45].

Consistent with these assessments, another case study on Venezuela, conducted by Francisco Rodriguez of Oil for Venezuela on behalf of the Sanctions and Security Research Project, concluded that "the combinationof economic mismanagement by Venezuelan leaders for over a decade and the devastating impact of US sanctions have caused the country to experience the largest economic contraction in Latin America'seconomic history, with Gross Domestic Product (GDP) falling 74.3% over the past eight years. This is the sixth largest contraction in world history and the largest in Latin American history since 1950. It is also the second largest contraction in the world outside of the war"[46].

It is also known that after U.S. economic sanctions related to Venezuela were imposed, several financial institutions have exited Venezuela and/or ceased providing any financial services, such as Uphold, Citibank, Wallbit and Paxful, most citing reasons such as operational risks, U.S. economic sanctions, and concerns regarding the regulatory landscape around Venezuela and the company's risk tolerance[47]. In addition, many Venezuelans around the world have had their bank accounts closed in the U.S. and other countries, solely because of their Venezuelan nationality, all of which also appears to be the result of disengagement, over- compliance and fear of sanctions, even if those Venezuelans are private citizen totally disconnected from the Venezuelan government. This has also been pointed out by studies and media reports[48].

Under the circumstances, we believe that the loss of correspondent banking relationships is another manifestation of over-compliance and fear of economic sanctions, particularly U.S. sanctions related to Venezuela, probably the most complicated, far-reaching and dangerous Sanctions Program the U.S. hasever imposed. The cost of implementing robust and effective compliance procedures, reputational risks, and fear of being subject to secondary sanctions and/or harsh civil and criminal penalties have led to widespread over-compliance to minimize the risks of unintended or unforeseen violations arising from the sanction's legalframework, which in the case of Venezuela is a complex, sometimes obscure and constantly changing program.

---

[45] Press release dated October 29, 2022 on Luis Oliveros' new report documenting how U.S. sanctions have directly exacerbated Venezuela's economic crisis at https://www.wola.org/2020/10/new-report-us-sanctions-aggravated-venezuelas-economic-crisis/. The name of the full report in Spanish is "*Impacto de las Sanciones Financieras y Petroleras sobre la Economía Venezolana"* October 2020, available at https://www.wola.org/wp-content/uploads/2020/10/Oliveros-informe-completo-2.pdf

[46] Francisco Rodriguez, New Options for Leveraging Sanctions to Address Venezuela's Humanitarian Crisis, p. 1, at https://keough.nd.edu/wp- content/uploads/2021/11/Venezuela-Executive-Summary.pdf

[47] See, for example, in connection with Uphol, PSA: Venezuela no longer supported by Uphold (or Gemini), dated on June, 2022 at https://community.brave.com/t/psa-venezuela-no-longer-supported-by-uphold-or-gemini/407050; to *Citibank, ABC News, Citibank to Cancel Some Venezuela Accounts at Economy Spirals*, at Paul Blake, on July 12, 2016 at https://abcnews.go.com/Business/citibank-cancel-venezuela-accounts-economy-spirals/story?id=40531090; to Wallbit and Paxful, Bitcoin.com, News, Crypto Neobanco Wallbit Leaves Venezuela Due to Sanctions, July 23, 2023, at https://news.bitcoin.com/crypto-neobank-wallbit-leaves-venezuela-due-to-sanctions/).

[48] Press release dated Oct. 29, 2022, on new report by Luis Oliveros documents how U.S. sanctions have directly exacerbated Venezuela's economic crisis, idem; ABC News, Citibank to Cancel Some Venezuela Accounts as Economy Spirals, by Paul Blake, July 12, 2016)

6. The force majeure defense and the doctrine of frustration

Some of the questions regarding the issue of Sanctions are directed towards whether the situation of bank overcompliance and loss of correspondent banks resulting from the Economic Sanctions is a force majeure event and/or a situation that allows invoking the doctrine of frustration in contracts.

Leaving aside the particularities of every jurisdiction on this matter, it is possible to make several general observations, including: (i) that the Economic Sanctions and/or their impact, even more regarding high impact sanctions programs such as the U.S. Sanctions related to Venezuela, could in fact make impossible for the banks the performance of contracts, being possible to invoke the doctrine of force majeure and/or frustration of contracts. (ii) that the Sanctions against Venezuela and their effects remain in full force and effect, with no prospect of being lifted or materially alleviated in the short term, and therefore remain a fact or situation that is present, real and certain; and (iii) that the Sanctions and the reaction of the correspondent banks appear as an external, inevitable or irresistible event not attributable to, and beyond the control of, the parties.

Finally, currently there are no prospects of any imminent material change in policy toward Venezuela and/or a complete lifting of the Venezuela Sanctions. Despite some calls for the easing of sanctions and the issuance of 42 General Licenses by OFAC, including the November 2022 GL 41 (authorizing Chevron and Chevron joint ventures to negotiate with the Government of Venezuela and PDVSA regarding oil projects in Venezuela), the U.S. sanctions program related to Venezuela remains robust and in full force and effect.

Although there were some reports that the US Government was considering easing sanctions related to Venezuela[49], including in the oil and gas sector, such possibility is still under discussion, may be progressively implemented, may be restricted (so far limited to allowing some US companies, such as Chevron, to resume oil activities in Venezuela under LG 41).

In addition, recent reports and statements from U.S. spokespersons confirm that there are no more plans for additional easing of sanctions related to Venezuela[50]. This situation appears unchanged even after the recent flexibilization of the Sanctions on October 18, 2023, with OFAC's General License 43 (regarding transactions with the State-owned company Minerven) and General License 44 (regarding the authorization of transactions in the oil and gas sector involving PDVSA and its subsidiaries for a period of 6 months). Despite the partial alleviation of the Sanctions, the Government of Venezuela, and its entities and instrumentalities, remain blocked entities. The main Executive Orders and also the *Determination* of March 22, 2019, are still in force, and thus the financial sector of the Venezuelan economy remains the target of secondary sanctions.

In this context, it seems unlikely that there will be any immediate and material change in the U.S. Sanctions Program against Venezuela, and thus it is also unlikely that there will be any immediate and relevant change in the situation of bank overcompliance and correspondent banking relationships.

---

[49] See, for example, *Wall Street Journal "WSJ"*, dated on October 5, 2022, *U.S. Looks to Ease Venezuela Sanctions*; also *Reuters,* dated on October 5, 2022, *U.S. says no change to Venezuela sanctions policy.*

[50] See, for example, Reuters, March 7, 2023, Ceraweek-US plans no wider easing of sanctions on Venezuela, referring to statements by the U.S. Secretary of Economic Growth and Energy that after the "limited changes in targeted sanctions" (the Chevron license) "there are no plans for further easing of sanctions."

***

Disclaimer. This Memo is only issued to provide some information or guidance regarding the extent of the Venezuela-Related Sanctions. This Memo is not, and is not intended to be, an advice, approval, or facilitation to avoid or circumvent any Executive Order, OFAC regulations, or statutes in any way. U.S. Sanctions laws and regulations are subject to change. The assessment of this Memo relies on factual information available, and additional facts or corrected factual information could change the assessment. There are no assurances that OFAC or other agencies of the U.S. Government will agree with the conclusions regarding the application of the U.S. Sanctions.