

Fourth Quarter 2021 Report

–Venezuela–

January 2022

I. NEWS

This section highlights excerpts of relevant press releases and brief comments on our views regarding such.

“US authorizes the winding down of transactions with PDVSA until 1 June 2022”

The Department of Treasury authorized the winding down of prohibited transactions and activities which are necessary for the liquidation of operations or agreements in Venezuela involving PDVSA or any related entity, until 1 June 2022.

The authorization approves transactions related to Chevron Corporation, Halliburton, Schlumberger Limited, Baker Hughes Holdings LLC and Weatherford International Public Limited Company.

<https://mundo.sputniknews.com/20211124/eeuu-autoriza-el-cierre-de-transacciones-con-pdvsa-hasta-el-1-de-junio-de-2022--1118602321.html>

“A New York Court declares that PDVSA must pay a significant debt to Red Tree”

Red Tree Investments LLC sued PDVSA in 2019 for default in the payment of loans in the amount of USD \$182 million. General Electric Capital Corp, allegedly granted a \$450 million loan to the Venezuelan oil company in 2015 and subsequently assigned the notes to Red Tree.

The New York Court concluded that PDVSA is in default of its obligations to Red Tree.

<https://www.eluniversal.com/economia/115119/la-corte-de-nueva-york-declaro-que-pdvsa-debe-saldar-una-importante-deuda-a-red-tree>

“Tareck el Aissami signs oil confidentiality agreement with Equatorial Guinea”

PDVSA's President, Tareck el Aissami, signed an oil agreement with the Minister of Mines and Oil of Equatorial Guinea, Gabriel Mbaa Obiang Lima, to improve and promote oil development between the two countries.

The document will allow the Equatorial Guinean government to provide confidential information to Venezuela in order to execute a joint study plan for subsequent onshore exploration.

<https://www.elnacional.com/economia/petroleo/tareck-el-aisami-firmo-convenio-de-confidencialidad-petrolera-con-guinea-ecuatorial/>

“US seized 1 million barrels of Iranian fuel shipped to Venezuela”

The seizure of four foreign-flagged vessels was executed by US authorities near the Arabian Sea. They also seized two shipments of weapons, including 171 surface-to-air missiles and 8 anti-tank missiles destined for Yemen Houthi militants.

<https://www.elnacional.com/economia/ee-uu-incauto-1-millon-de-barriles-de-combustible-irani-enviado-a-venezuela/>

“Switzerland takes action against two banks for their ties to PDVSA”

The Swiss financial market supervisor, FINMA, imposed some measures on Banca Zarattini and Compagnie Bancaire Helvétique (CBH) for their alleged involvement in money laundering practices with PDVSA. Recent investigations led to possible links of certain Swiss banks with corrupt schemes related to Venezuela, especially with PDVSA. Including 30 entities and about 5 sanctioning procedures.

In the case of CBH, they were ordered to stop all business relations with Venezuelan clients.

<https://www.elnacional.com/economia/suiza-toma-medidas-contra-dos-bancos-por-sus-lazos-con-pdvsa>

“Citgo Board in desperate talks with Washington to keep creditors at bay”

The supervisory board of Citgo Petroleum held several meetings in Bogota with US officials in an attempt to extend the protection of the US Treasury Department, to prevent creditors from collecting and to try to avoid a forced auction. Without the extension, the protection would end on January. If granted, the company could comply with payment proposals drafted by JPMorgan Chase & Co.

Moreover, the Board has met with creditors to discuss payment proposals.

The opposition led by Juan Guaidó, who controls the supervisory Board, has apparently not agreed or disclosed how they plan to manage these foreign assets.

As of the date of this report, the Treasury Department has not extended the license.

<https://www.reuters.com/business/energy/exclusive-citgo-boards-last-ditch-talks-with-washington-keep-creditors-bay-2021-10-22/>

II. CASE LAW

This section comments on relevant case law during the corresponding quarter and our brief comments on it.

Venezuelan Courts were in ‘judicial recess’ from 15 December to 15 January.

Judgment by the Constitutional Chamber of the Supreme Court of Justice dated 14 October 2021 in re: Luis Eduardo Pulido Canino.

The Constitutional Chamber of the Supreme Court of Justice provided that when a claim is directed against a group of companies, proper service to one of such companies will be understood as being done to the others, i.e.: it will be enough just to serve one of them so that the others are understood served as well.

Judgment by the Administrative and Political Chamber of the Supreme Court of Justice dated 14 October 2021 in re: PDVSA GAS, S.A.

The Chamber analyzed and ruled on the powers of Judicial Courts in respect to the annulment of arbitration awards. Venezuelan Commercial Arbitration Law provides that there are no judicial appeals for arbitration awards and the only available remedy is to request for the annulment of same, which will have to be filed before the Superior Court of the place where the award was issued. This should not be understood as an appeal.

The referred law provides a restrictive list of reasons under which an award can be declared null. The Chamber states that this list intends to preserve the free will and autonomy of the parties and procedural economy. It does not contemplate in any way, the possibility of the Court to review the merits or substance of the case, but instead only the formal defects of the arbitration process.

Nonetheless, the Supreme Court determined that despite the restrictive list provided by the Commercial Arbitration Law, this was sufficiently drafted to include possible violations of Constitutional rights, such as due process and right of defense. Therefore, the lack of foundation/basis, as an error in proceedings can be then included in the aforementioned list.

Decision by the Social Chamber of the Supreme Court of Justice dated 30 November 2021.

The Social Chamber considered necessary to issue a list of guidelines that will regulate the practice of electronic notifications, the issuance of regular and certified copies via email or via any other means of communication, in matters raised before this High Court. The Supreme Court of Justice will favor the implementation of technological instruments in their files.

The parties will be urged to expressly include their email in their briefs and court file records, in order to optimize the notification processes. Online copies may be issued upon request, using electronic signatures.

Judgment by the Social Chamber of the Supreme Court of Justice dated 8 December 2021 in re: Oscar Rafael Quiróz Bravo et al v. Baker Hughes de Venezuela

The High Court recognizes that there is no prohibition to execute agreements in foreign currency. While the Bolívar is the legal currency, it is not compulsory. The Constituent Decree No. 41.452 dated 2 August 2018, which provides for private parties to be able to carry out transactions in foreign currency, without any limitations other than those established by law, remains in force.

The Court ratified their criteria, by which indexation or monetary correction does not proceed when it comes to obligations in foreign currency updated at the rate in force at the time of payment. However, the Organic Labor Procedural Labor Law establishes that when an enforceable ruling is not executed voluntarily, interests of arrears will be caused and therefore, indexation or monetary correction will apply.

III. LEGISLATION

This section expands on National and International Legislation adopted in the country and relevant to the industry.

National Decree N° 4.621 dated 6 December 2021

José Gregorio Biomorgi Muzattiz was appointed Minister of Industries and National Production.

National Decree N° 4.598 dated 8 October 2021

Cassiterite, nickel, rhodium, titanium and minerals associated with rare earth elements are reserved to the National Executive and are declared as ‘strategic elements’ for their exploration, exploitation, processing and commercialization, and thus are subject to the reserve regime established in the Law that Reserves to the State the Activities of Exploration and Exploitation of Gold and other Minerals.

National Decree N° 4.597 dated 7 October 2021

William Miguel Serantes Pinto was appointed President of Compañía General de Minería de Venezuela, C.A (MINERVEN). David Alberto Pedreañez Sánchez was appointed as President of the Joint Venture Sociedad Anónima Minería Binacional Turquía-Venezuela (MIBITURVEN, S.A).

Provision N° 068 of the Maritime Authority (National Institute of Aquatic Spaces INEA) dated 14 December 2021

Benigno Vila Penín was appointed Harbormaster of Las Piedras.

Provision N° 069 of the Maritime Authority (National Institute of Aquatic Spaces INEA) dated 14 December 2021

Adolfo Jesús Contreras Soto was appointed Harbormaster of Puerto Cabello.

IV. BILLS

This section lists draft regulations/bills being proposed to and/or discussed in Congress.

Law that Approves the Energy Agreement between the Bolivarian Republic of Venezuela and the Government of Trinidad and Tobago.

The Agreement aims to create a channel of cooperation for commercial exchange between both States.

It intends to guarantee a reliable exchange of oil and funds under preferential conditions. It also seeks to contribute to the economic and social development of both countries, as well as to promote and develop joint projects throughout the oil chain. The agreement establishes that the parties will develop energy projects, particularly those involving the natural gas fields located within the two nations.

<http://www.asambleanacional.gob.ve/noticias/an-aprueba-en-primer-discusion-acuerdo-energetico-con-trinidad-y-tobago>

Clyde & Co Caracas