



By Allison Everhardt

## On the Brink of Regime Change in Venezuela, Here's Why Creditors Should Still Worry

With regime change in Venezuela appearing imminent, international creditors and companies seeking compensation for government expropriations may feel more hopeful about their chances of recovery than at any time in recent memory. Unfortunately, for a variety of reasons, these hopes may be misplaced.

Venezuela has the world's largest proven oil reserves<sup>1</sup> and has relied on its oil exports to prop up its economy for decades, even before they became the funding for former President Hugo Chavez's socialist agenda.<sup>2</sup> It's no surprise, then, that creditors and others seeking repayment have focused on its oil-related assets. And in at least one case last year, this strategy proved successful as ConocoPhillips won injunctions that froze assets of the state oil company, *Petróleos de Venezuela* ("PDVSA"), in the Caribbean before the parties reached a deal on repayment for the 2007 expropriation of the company's Venezuelan assets.<sup>3</sup>

While not every sovereign asset search presents the same challenges as Venezuela, they are all complex and frequently involve clearing a number of hurdles as the case proceeds. For example, a key part of the process involves identifying the pool of entities that may be holding assets on behalf of the country in question, such as wholly-owned state entities serving as *alter egos* of the sovereign. However, proving that a particular entity is an *alter ego* can require drawn out and expensive legal wrangling. In the Venezuelan context, US courts have historically seemed reticent to put Citgo in the crosshairs of creditors, but a ruling by the US District Court in Delaware last August was a gamechanger in that it accepted that PDVSA was an *alter ego* of the Venezuelan state.<sup>4</sup> The ruling allows for mining companies Crystallex, Rusoro and presumably others, to seize PDVSA assets in the US, putting Citgo at risk.<sup>5</sup>

But obtaining legal recognition of *alter egos* is only part of the process. Sometimes the most difficult task is proving the actual ownership of a particular asset. And in the event that ownership can be established, significant challenges remain. First, practicalities on-the-ground mean that assets in friendly jurisdictions

<sup>1</sup><https://www.bbc.com/news/business-47023002> and <https://www.houstonchronicle.com/business/energy/article/CITGO-13261273.php>

<sup>2</sup><https://foreignpolicy.com/2018/07/16/how-venezuela-struck-it-poor-oil-energy-chavez/>

<sup>3</sup><https://www.miamiherald.com/latest-news/article210820589.html>, <https://oilprice.com/Latest-Energy-News/World-News/Crystallex-Threatens-Venezuelas-Crown-Jewel-Citgo-Again.html> and <https://www.caribbean-council.org/venezuelas-oil-assets-seized-across-dutch-speaking-caribbean/>

<sup>4</sup><https://www.ft.com/content/df04f4ea-a034-11e8-85da-eeb7a9ce36e4> and <https://www.wsj.com/articles/u-s-judge-authorizes-seizure-of-venezuelas-citgo-1533853734>

<sup>5</sup><https://www.reuters.com/article/us-venezuela-pdvsa-crystallex/crystallex-court-win-against-venezuela-aided-by-finding-on-pdvsa-u-s-court-idUSKBN1KV1ZM> and <https://www.mcclatchydc.com/news/nation-world/world/latin-america/article225240320.html>

with strong rule of law are the easiest to seize. It is widely known that China and Russia have provided Venezuela with significant financial assistance<sup>6</sup> and payments through a Russian bank partially owned by Venezuela's government have grown since the US imposed recent sanctions.<sup>7</sup> The international political climate being what it is, it seems unlikely that either China or Russia would be inclined to follow the US's lead in freezing or otherwise impeding Venezuela's assets in their spheres of influence.

That said, there are steps creditors can take. Focusing on assets in friendly jurisdictions outside the Western hemisphere is one option, as PDVSA subsidiaries or other state-owned entities that have received less attention than its US operations could provide useful leads to assets available for seizure.

Identifying ill-gotten gains by Maduro administration officials offers another possible lead to government assets. Others have already suggested repatriation of such funds as a way to alleviate some of the suffering of the Venezuelan people.<sup>8</sup> However, asset traces for individuals include many of the same challenges as those for sovereigns, such as establishing ownership and relying on friendly jurisdictions for attachment. Individuals are also likely to use relatives, trusts or other proxies like nominee accounts to conceal the true ownership of certain assets. Additionally, individuals may be more capable of building complex offshore holdings, in places where disclosure requirements are low, to further conceal their true holdings. They are also nimbler than sovereigns in moving assets around if their holdings seem threatened. Even if real property or other assets are identified, establishing that they were purchased with legitimate wealth or misappropriated funds may be a near impossible task.

As international creditors and others seeking repayment from Venezuela find themselves on the threshold of a new era, they should check their expectations. Putting aside political and ethical questions raised by collecting on the estimated \$140 billion in outstanding debt<sup>9</sup> from Venezuela while its society faces dire conditions, we know from experience that finding and seizing assets, be they sovereign or otherwise, is not as easy as it may seem. As Simón Bolívar said, what perhaps is most needed now is *paciencia y más paciencia*.

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<sup>6</sup><https://www.cfr.org/article/maduros-allies-who-backs-venezuelan-regime>

<sup>7</sup><https://news.yahoo.com/venezuela-apos-russian-bank-grows-124209267.html>

<sup>8</sup><https://www.washingtonpost.com/opinions/2019/01/29/seize-money-venezuelan-kleptocrats-help-country-its-people>

<sup>9</sup><https://www.ft.com/content/4f78b714-25f2-11e9-b329-c7e6ceb5ffdf>

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