

International Trade Alert

August 30, 2017

President Trump and OFAC Announce Targeted Economic Sanctions on Venezuela

On August 25, 2017, President Trump issued an [Executive Order](#) (EO) imposing economic sanctions related to Venezuela. The new measures prohibit U.S. persons from engaging in certain debt-, equity-, and securities-related transactions involving the government of Venezuela and entities owned or controlled by the government of Venezuela, which include *Petróleo de Venezuela S.A.* (PdVSA).

Notably:

- These new measures do not impose a comprehensive prohibition on U.S. persons engaging in all transactions related to the government of Venezuela or entities owned or controlled by the government of Venezuela, and the EO does not designate additional Venezuelan entities as specially designated nationals or block new Venezuelan entities.
- Instead, these sanctions are similar in some respects to the Ukraine-Related Sanctions Regulations, which are targeted, or what are called “sectoral,” sanctions.
- U.S. persons should exercise additional diligence to ensure that they do not engage in prohibited transactions with entities of the government of Venezuela (including Venezuelan or foreign entities owned or controlled by the government of Venezuela)—which generally involve new debt, new equity, bonds, dividends or other securities—and should consider the implications of these new restrictions for business transactions involving such entities.
- These new prohibitions are also relevant for non-U.S. companies, because the restrictions will limit the ability of non-U.S. persons to engage with Government of Venezuela entities to the extent that U.S. persons, including U.S. financial institutions, would be involved in the transaction.

Simultaneously with the issuance of the EO, the Office of Foreign Asset Control (OFAC) of the U.S. Department of the Treasury published four General Licenses (GLs) and a series of [Frequently Asked Questions](#) (FAQ) pertaining to the new Venezuelan sanctions.

Key Provisions

The EO prohibits U.S. persons from engaging in “all transactions related to, provision of financing for, and other dealings in,” including the provision of services in support of:

- new equity¹ of the government of Venezuela, including new equity of PdVSA, issued on or after August 25, 2017
- New debt² of the government of Venezuela with a maturity of greater than 30 days (or, in the case of PdVSA, with a maturity of greater than 90 days) issued on or after August 25, 2017
- bonds issued by the government of Venezuela (including PdVSA) before August 25, 2017
- dividend payments or other distribution of profits to the government of Venezuela from any entity owned or controlled, directly or indirectly, by the government of Venezuela.

Additionally, the EO prohibits U.S. persons from directly or indirectly purchasing any securities, including debt and equity securities, directly or indirectly from the government of Venezuela, subject to two limited exceptions: (i) securities with a maturity of less than or equal to 90 days that qualify as “new debt” issued by PdVSA, and (ii) securities with a maturity of less than or equal to 30 days that qualify as “new debt” issued by other government of Venezuela entities.

For purposes of this EO, the government of Venezuela includes any political subdivision, agency or instrumentality of the government of Venezuela, including the Central Bank of Venezuela and PdVSA, as well as entities that are “owned or controlled by, or acting for or on behalf of” the government of Venezuela, including entities that are 50 percent or more owned by the government of Venezuela.

General Licenses Issued by OFAC

OFAC concurrently issued four GLs authorizing activities that are otherwise prohibited by the provisions discussed above:

- **Wind-Down Period:** **GL 1** provides a 30-day window for U.S. persons to wind down contracts or other agreements that were in effect prior to the enactment of these sanctions (i.e., prior to August 25, 2017) and that are now prohibited as described above, **except** with respect to dividend payments or other distributions of profits to the government of Venezuela from any entity owned or controlled, directly or indirectly, by the government of Venezuela after August 25, 2017. Persons who utilize GL 1 must file detailed reports to OFAC within 10 business days after the transactions undertaken pursuant to GL 1 take place.
- **CITGO Holding, Inc.:** **GL 2** authorizes U.S. persons to engage in transactions otherwise prohibited by the new debt and equity provisions where those transactions are related to new debt and new equity issued by CITGO Holding, Inc. and its subsidiaries, including the purchase of securities from CITGO Holding, Inc. and its subsidiaries, directly or indirectly, which would be otherwise unlawful

¹ “Equity” includes, but is not limited to, stocks, share issuances, depositary receipts or any other evidence of title or ownership. *Id.*

² “Debt” includes, but is not limited to, bonds, loans, extensions of credit, loan guarantees, letters of credit, drafts, bankers acceptances, discount notes or bills, or commercial paper. See OFAC, Frequently Asked Questions Regarding the Executive Order Imposing Additional Sanctions with Respect to the Situation in Venezuela, *available* at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/vz_faqs_08252017.pdf at 3.

under the new EO. However, this GL does not authorize U.S. persons to engage in transactions related to bonds issued by the government of Venezuela before August 25, 2017 (which are prohibited by the EO and addressed in GL 3) or dividend payments or other distributions of profits to the government of Venezuela.

- **Authorized Venezuela-Related Bonds:** GL 3 establishes a new [List of Authorized Venezuela-Related Bonds](#) (“Bond List”) and authorizes U.S. persons to engage in transactions related to these specific bonds, as well as bonds issued before August 25, 2017, by “U.S. person entities” owned or controlled, directly or indirectly, by the government of Venezuela. However, U.S. persons are not authorized to directly or indirectly purchase bonds on the Bond List from the government of Venezuela due to the prohibition regarding purchase of securities in the EO.³
- **Authorization for Agricultural and Medical Goods:** GL 4 authorizes transactions involving the export or reexport of agricultural commodities, medicine and medical devices, or replacement parts and components for medical devices, to Venezuela, provided that the exportation or reexportation is licensed or otherwise authorized by the Bureau of Industry and Security of the U.S. Department of Commerce.

Impact of New Sanctions

The new targeted sanctions measures do not block new entities and do not impose a blanket prohibition on U.S. persons from engaging in all transactions related to the government of Venezuela. However, the measures require U.S. persons to exercise additional diligence to ensure that they do not engage in restricted transactions with entities of the government of Venezuela involving new debt, new equity, bonds, dividends or other securities. To comply with these new restrictions, as a best practice, U.S. companies should screen all parties to determine whether they are part of the government of Venezuela or owned or controlled by the government of Venezuela. Transactions with such entities should be reviewed to ensure that either they are not contrary to the prohibitions described above or they are otherwise authorized by one of the general licenses issued by OFAC. To the extent that U.S. persons are using distributor or third-party commercial arrangements, it may also be prudent to review contractual terms to ensure that any risks relating to these sanctions are also appropriately addressed.

U.S. persons are not obligated to block transactions subject to the prohibitions of the EO. U.S. persons must reject these transactions and, where applicable, report rejected transactions to OFAC within 10 business days. Consistent with OFAC policy on other sanctions programs, the FAQs note that OFAC may issue specific licenses for transactions that may otherwise be prohibited if such transactions are in the foreign policy interests of the United States.⁴ These additional sanctions measures are relevant for non-U.S. companies as well. Non-U.S. companies should be aware that these restrictions will limit their ability to engage with government of Venezuela entities to the extent that U.S. persons, including U.S. financial

³ *Id.* at 3-4.

⁴ *Id.*

institutions, would be involved in the transaction. Such involvement may cause difficulty or delay in completing transactions as U.S. persons take steps to avoid prohibited transactions.

OFAC may issue civil or criminal penalties for violations of these sanctions. The statutory maximum civil penalty is the greater of \$289,238 or twice the value of the transaction.⁵ Criminal penalties may include a fine of not more than \$1 million, or if a natural person, imprisonment for not more than 20 years, or both.

We encourage clients to monitor developments closely with regard to U.S. sanctions programs with Venezuela.

⁵ Penalties are subject to the limitations of the International Emergency Economic Powers Act (IEEPA), which is the authorizing statute for the EO.

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