

New Sanctions Prohibit US Firms From Wide Range of Dealings With Venezuelan Government and PdVSA

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On August 24, 2017, the Trump Administration significantly expanded sanctions against the Government of Venezuela, including state-owned oil company Petroleos de Venezuela, S.A. (PdVSA). These latest sanctions reflect elements of several other US sanctions programs, including restrictions on access to US capital markets and authorizations for US firms to “wind down” existing contractual obligations. While the sanctions include a prohibition on dealings in all Venezuelan sovereign bonds, they are accompanied by a general license authorizing transactions relating to certain previously issued bonds. US firms, especially US financial services firms, should carefully examine the interplay between the new prohibitions and the accompanying general licenses.

The new Executive Order signed by President Trump, “Imposing Additional Sanctions with Respect to the Situation in Venezuela,” contains five substantive prohibitions that apply to US persons and to activities within the United States.

Section 1(a) prohibits all transactions related to, provision of financing for, and other dealings in:

1. New debt of PdVSA with a maturity of greater than 90 days;
2. New debt with a maturity of greater than 30 days, or new equity, of the Government of Venezuela (other than that of PdVSA, addressed above);
3. Bonds issued prior to August 25, 2017, by the Government of Venezuela; and
4. Dividend payments or other distributions of profits to the Government of Venezuela from any entity that it directly or indirectly owns or controls.

And Section 1(b) prohibits the direct or indirect purchase of securities from the Government of Venezuela, other than those qualifying as new debt below the applicable authorized tenors for PdVSA and the Government of Venezuela identified above.

While these prohibitions are expansive, the US Department of the Treasury's Office of Foreign Assets Control (OFAC) issued four general licenses which have an impact on applicable restrictions. These measures echo past OFAC authorizations, issued under other US sanctions programs, with which many in the financial services industry may already be familiar. Although the

general licenses do not authorize activities that are otherwise prohibited by US sanctions, including past blocking sanctions against designated Venezuelan individuals and entities, they affect the scope, timing, and application of the Executive Order's prohibitions and should be closely reviewed by US financial services firms.

General License No. 1 authorizes all transactions otherwise prohibited (other than the prohibition against dealings in dividend payments and other distributions of profit, which are outside the scope of this authorization) that are ordinarily incident and necessary to wind down contracts or other agreements that were in effect prior to August 25, 2017. Such wind-down must occur by September 24, 2017, and those relying on it must file a report with OFAC within 10 business days of the wind-down transactions. Past US sanctions programs, most notably those targeting Iran, have included comparable wind-down authorizations.

General License No. 2 authorizes transactions otherwise prohibited by the “new debt” and “new equity” provisions discussed above where the only Government of Venezuela entities involved are CITGO Holding, Inc., and any of its subsidiaries. When the US Department of State sanctioned PdVSA in 2011 for its support of the Iranian energy sector, it specifically affirmed that such sanctions did not apply to PdVSA subsidiaries. OFAC similarly recognized in this case the collateral harm that sanctions imposed against CITGO Holding, Inc. would cause in the United States.

General License No. 3 authorizes transactions otherwise prohibited by the restriction on sovereign bonds if the bonds are specified in the Annex to the general license. The list of such bonds is [available here](#). General License No. 3 also authorizes transactions otherwise prohibited involving bonds that were issued prior to August 25, 2017, by US entities that are directly or indirectly owned by the Government of Venezuela.

General License No. 4 authorizes new debt transactions related to the exportation or reexportation of agricultural commodities, medicine, medical devices, and replacement parts and components, provided the export transaction is authorized under the Export Administration Regulations. The scope of products authorized under this general license is defined by reference to other US laws that will be familiar to US exporters of such goods.¹

OFAC's FAQs that accompanied the Executive Order and General Licenses provide important guidance to US firms that must comply with these new sanctions. Most notably:

- *The 50 Percent Rule*: The OFAC 50 Percent Rule applies to these new sanctions, meaning that the prohibitions targeting the Government of Venezuela include entities owned 50 percent or more, individually or in the aggregate, by the Government of Venezuela.
- *Treatment of “debt” and “equity”*: The terms “debt” (including the rollover of existing debt) and “equity” have the same meanings as under the US sectoral sanctions against Russia.² The new sanctions prohibit US persons from purchasing any securities, even those issued by a non-sanctioned party, from the Government of Venezuela, unless the securities are “new debt” that is below the applicable authorized tenor.
- *Banking services*: US financial institutions may continue to maintain correspondent accounts, and process US dollar-clearing transactions, for the Government of Venezuela,

provided the transactions are not specifically prohibited by the new Executive Order.

- *Third-party debt:* US persons may engage in transactions in which the Government of Venezuela may be a counterparty in connection with debt issued by a non-sanctioned party (e.g., a loan provided by the Government of Venezuela, or where the Government of Venezuela is an underwriter on new debt of a non-sanctioned third party). US persons may also extend credit above the applicable authorized tenor to non-sanctioned parties for the purpose of purchasing goods or services from the Government of Venezuela (provided, however, the Government of Venezuela is not the indirect borrower).
- *Previously existing credit or loans:* A US firm that has entered into a long-term credit facility or loan agreement prior to August 25, 2017, may process drawdowns and disbursements with repayment terms of 90 days or less (for PdVSA) or 30 days or less (for the rest of the Government of Venezuela), as well as those in which the repayment terms exceed the applicable authorized tenor if the terms of such drawdowns and disbursements are not modified on or after August 25, 2017. But where terms are negotiated on or after that date and the repayment terms exceed the applicable authorized tenor, then drawdowns and disbursements are prohibited. US persons may engage in transactions necessary to exit or replace participation in a long-term loan facility extended to the Government of Venezuela prior to August 25, 2017, provided the transaction does not otherwise violate the Executive Order.
- *Notably, the OFAC's FAQs do not include an exclusion for dealings in derivatives, which exists in similar restrictions applicable to Russian sectoral sanctions.*

OFAC's FAQs also signaled to the Government of Venezuela what conditions the US Government would expect prior to issuing any licenses for a new bond or other issuance of debt. OFAC noted the Lima Declaration of August 8, 2017, and stated that “the United States would consider using licensing authority” for US persons to deal in the issuance of new debt if that new debt were issued by a democratically elected Venezuelan National Assembly. As in the case of US sanctions against Russia, where the United States has generally been clear that sanctions relief would be tied directly to Russia's adherence to the *Minsk II* agreement, the US Government has linked sanctions relief for Venezuela to democratic reforms in that country.

In this Administration, as in the past, the new action against the Government of Venezuela illustrates a key trend for the imposition of US sanctions: these measures remain a central tool of US foreign policymaking in responding to evolving geopolitical events. US firms—especially those in the financial services sector—should review how the new sanctions against the Government of Venezuela impact their current financial positions, prospective business plans, and ongoing compliance. At this point, it is possible that the Trump Administration will take further action in sanctioning the Government of Venezuela. Accordingly, US firms should continue monitoring relevant geopolitical developments involving Venezuela and ensuring that their internal compliance programs take into account applicable sanctions risks and requirements.

¹ Agricultural commodities include those defined in section 102 of the Agricultural Trade Act of 1978, as well as food for humans; seeds for food crops; fertilizers or organic fertilizers; or reproductive

materials for the production of food animals. Medicine is an item that falls within the definition of “drug” in section 201 of the Federal Food, Drug, and Cosmetic Act. And medicine device is any “device” under section 201 of the Federal Food, Drug, and Cosmetic Act.

²*Debt* includes bonds, loans, extensions of credit, loan guarantees, letters of credit, drafts, bankers acceptances, discount notes or bills, or commercial paper. *Equity* includes stocks, share issuances, depository receipts, or any other evidence of title or ownership.

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