

New executive order targets Venezuela's access to U.S. financial markets

August 29, 2017

Effective August 25, 2017, President Trump issued a new Executive Order, (the Order), which targets the Government of Venezuela's (GOV) and Petroleos de Venezuela, S.A.'s (PdVSA) ability to access capital from the United States including profits and dividends from its US assets, such as CITGO Holdings, Inc. (CITGO), the PdVSA-owned American subsidiary. In a number of respects these new financial restrictions resemble Russia-related "sectoral" sanctions imposed by various directives but there are certain important differences, as these new sanctions only target the GOV.

The Office of Foreign Assets Control (OFAC) of the US Department of the Treasury has issued four General Licenses, in conjunction with the Order, to mitigate the impact of the new sanctions on US economic interests, including on CITGO's operations in the United States, and to continue to allow transactions related to the provision of agricultural commodities, medicine and medical devices to Venezuela. OFAC also issued Frequently Asked Questions (the FAQs) providing guidance on the new sanctions and General Licenses.

Businesses transacting with the GOV and PdVSA should immediately review the relevant terms of payment and their accounts receivable to ensure compliance with the new sanctions. Those who invest or trade in debt or equity issued by the GOV, including by other state-owned entities beyond PdVSA, as well as those who want to purchase any other securities from the GOV (even if not issued by the GOV) should also assess the scope of new restrictions. Bonds specified in the Annex to OFAC's General License 3 are excluded from the restrictions but all other bonds issued by the GOV prior to August 25, 2017, as well as new bonds and other debt over the specified maturity terms will be subject to restrictions.

Instead of designating individuals, the Trump Administration targets the GOV's access to capital

These new sanctions limit the GOV's access to US capital as well as prohibit assistance by US persons with respect to capital-raising activities of the GOV even if they are done in other markets, not involving US-denominated securities. They purposefully seek to deprive the GOV of funds from particularly valuable US-based assets, such as CITGO which is prohibited from paying dividends or distributing profits to PdVSA or the GOV, and from acquiring longer-term funding through PdVSA. Pursuant to the Order, US persons or persons within the United States cannot finance, engage in any transaction related to, or otherwise deal in any of the following:

- New “debt” (including rollover of existing debt) with a length of maturity of more than 90 days by, on behalf of, or for the benefit PdVSA, its property or its interests in property;
- New “debt” (including rollover of existing debt) with maturity of more than 30 days by, on behalf of, or for the benefit of the GOV (as it is broadly defined in the Order), its property or its interests in property (other than PdVSA);
- New “equity” issued by, on behalf of, or for the benefit of the GOV, including PdVSA;
- Bonds issued by the GOV prior to August 25, 2017 (the effective date of the Order), but with authorization to deal in specifically enumerated bonds identified in OFAC’s General License No. 3; and
- Dividend payments or other distributions of profits to the GOV from any entity it owns or controls, directly or indirectly (including dividends or profit distributions from CITGO, as those are not covered by OFAC’s General License No. 2 that authorizes other activities with CITGO that are otherwise targeted by the Order).

The Order also prohibits, with certain exceptions, the purchase, directly or indirectly, by a US person or person within the United States, of securities from the GOV, and this is not limited to securities issued by the GOV. As a result, US persons cannot purchase from the GOV, or otherwise facilitate the sale of, any securities except those that qualify as new debt with maturity of less than or equal to 30 days (for the GOV) or less than or equal to 90 days (for PdVSA).

These sanctions also extend to entities that the GOV owns by 50 percent or more. It is important to highlight that the Order defines the GOV to include any person owned or controlled by, or acting for or on behalf of the GOV. Therefore, entities owned 50 percent or more by the GOV, or entities controlled by the GOV are also subject to these new sanctions. As such, bonds and other debt or equity of Venezuelan state-owned entities or instrumentalities, including the Central Bank of Venezuela, are targeted by the new Order. These sanctions do not require US persons to block the property or interests in property of the GOV, nor is the GOV designated by OFAC as a Specially Designated National and Blocked Person (SDN). Instead, the United States targets bonds and other securities based on its view that the GOV is selling assets for much less than they are worth and using the proceeds to enrich supporters of the regime. See the FAQs available [here](#).

While these sanctions restrict US persons and persons within the US from engaging in certain transactions with companies owned by GOV, including the state owned oil and natural gas company, PdVSA, these sanctions do not restrict US persons’ access to Venezuelan crude oil or purchase/sale of such oil when the transaction does not involve new debt over the maturity terms outlined above.

Companies should assess new restrictions before proceeding with transactions involving the GOV

Despite these new prohibitions, US persons can still conduct business involving the GOV when the activity does not trigger new sanctions. In conjunction with the Order, OFAC issued four General Licenses. Collectively, these general licenses are intended to provide a limited wind down period; minimize the impact of the new sanctions on the US economy – for example, allowing US persons to continue engaging in transactions with CITGO, and; allow for continued engagement with the GOV in the agricultural and medical spheres.

Until September 24, 2017, US persons can engage in all transactions ordinarily incident and necessary to winding down contracts, pursuant to General License No. 1, except the restrictions on dividends/profits payable to the GOV as those are not authorized even by this “wind-down” general license.

US persons can engage in all transactions and other dealings involving new debt or new equity of CITGO and any of its subsidiaries pursuant to General License No. 2 (we also note that this authorization does not allow dividend payments or other distributions of profit to the GOV so CITGO and its subsidiaries are not authorized to make such payments as of August 25, 2017).

US persons can engage in all transactions related to the provision of financing for, and other dealings in bonds issued by the GOV or its entities before August 25, 2017 if the bonds are identified on the List of Authorized Venezuela-Related Bonds in the Annex to General License No. 3, including such bonds issued by the GOV or PdVSA that are specifically enumerated on that list.

Finally, US persons can engage in all transactions related to the provision of financing for, and other dealings in new debt related to the exportation or reexportation of agricultural commodities, medicine, medical devices, or replacement parts and components for medical devices to Venezuela or to persons in third countries purchasing specifically for resale to Venezuela, pursuant to General License No. 4. However, such exports or reexports must be in compliance with the U.S. export control regulations administered by the US Department of Commerce’s Bureau of Industry and Security (BIS).

Similar to the guidance issued for Russia-related sectoral sanctions, OFAC’s FAQs make clear that US persons can deal with the GOV as counterparty to all transactions involving debt issued by a non-sanctioned third party after August 25, 2017 (e.g., where the GOV is the lender and the borrower is not sanctioned). Such non-prohibited transactions include new loans provided by the GOV to non-sanctioned third parties, transactions in which the GOV is an underwriter of new debt for non-sanctioned third parties, or accepting payment under a letter of credit issued, advised, or confirmed by the GOV as long as it is not the borrower. These transactions are not prohibited even if the debt exceeds the length of maturity otherwise prohibited by the Order.

This is the fourth round of sanctions involving Venezuela. See Hogan Lovell’s client alert regarding the March 8, 2015 sanctions [here](#). See Hogan Lovell’s client alert regarding the July 26, 2017 sanctions [here](#). See Hogan Lovell’s client alert regarding the July 31, 2017 sanctions [here](#).

Please contact any member of our global sanctions team if you have any questions about these new US sanctions.

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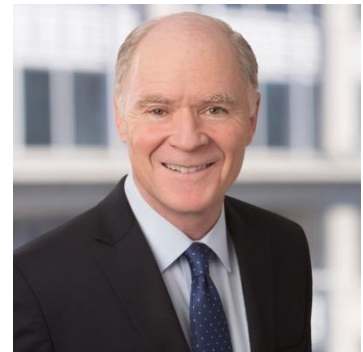
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