

Client Alert

International Trade & Litigation Practice Group

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Venezuela Sanctions Update: U.S. Government Sanctions PdVSA

On August 24, 2017, President Trump issued Executive Order 13808 (“E.O. 13808” or the “Executive Order”) titled “Imposing Additional Sanctions With Respect to the Situation in Venezuela.” The Executive Order prohibits certain transactions involving the Venezuelan Government, defined broadly to include Petroleos de Venezuela, S.A. (“PdVSA”), the Venezuelan state petroleum company, and any other entity owned or controlled by the Venezuelan Government. Given the explicit targeting of PdVSA, the new sanctions will have significant impact on the oil and gas industry. In a [press release](#) accompanying the issuance of the Executive Order, the White House indicated that the new prohibitions were “carefully calibrated to deny the Maduro dictatorship a critical source of financing to maintain its illegitimate rule.” Nevertheless, these sanctions represent a significant shift in the Administration’s approach to the ongoing situation in Venezuela. Before E.O. 13808, new sanctions related to Venezuela were limited to listing current and former government officials on the Specially Designated Nationals (“[SDN](#)”) List.

Below is a summary of the new prohibitions outlined in E.O. 13808, as well as the [frequently asked questions](#) (“FAQs”) and [general licenses](#) concurrently issued by the Office of Foreign Assets Control (“OFAC”), U.S. Department of the Treasury.

New Prohibitions

All transactions related to, provision of financing for, and other dealings in the following by a United States person or within the United States are prohibited:

- new debt with a maturity of greater than 90 days of PdVSA;
- new debt with a maturity of greater than 30 days, or new equity, of the Government of Venezuela, other than debt of PdVSA covered above;
- bonds issued by the Government of Venezuela prior to August 25, 2017, i.e., the sanctions effective date;

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- 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;
- purchasing, directly or indirectly, securities from the Government of Venezuela other than those securities qualifying as new debt with a maturity of less than or equal to 90 days (for PdVSA) or 30 days (for the rest of the Government of Venezuela).

These prohibitions apply to any entities in which the Government of Venezuela holds a 50% or greater interest. Importantly, the Executive Order does not require U.S. persons to block the property or interests in property of the Government of Venezuela. However, U.S. persons must reject transactions or dealings that are prohibited by E.O. 13808, and if a U.S. financial institution, file a rejected transactions report with OFAC within 10 business days.

Each of the prohibitions are discussed in more detail below.

New Debt and Equity

As a result of the issuance of E.O. 13808 all transactions related to, provision of financing for, and other dealings in the following by a United States person or a person within the United States are prohibited:

- a) new debt with a maturity of greater than 90 days of PdVSA,
- b) new debt with a maturity of greater than 30 days of the Government of Venezuela (other than the debt of PdVSA), and
- c) new equity of the Government of Venezuela, defined broadly to include any of its political subdivisions, agencies, or instrumentalities, including the Central Bank of Venezuela and PdVSA.

The term debt includes bonds, loans, extensions of credit, loan guarantees, letters of credit, drafts, bankers acceptances, discount notes or bills, or commercial paper. The term equity includes stocks, share issuances, depositary receipts, or any other evidence of title or ownership. *New debt and new equity* is any debt or equity issued on or after August 25, 2017, the date the sanctions became effective. These definitions mirror those in the Ukraine / Russia sanctions issued in 2014.

Long-term credit facility or loan agreements contractually agreed to prior to the sanctions effective date are *not* prohibited by the Executive Order if: (i) the drawdowns and disbursements under the agreement have repayment terms of 90 days or less (for PdVSA) or 30 days or less (for the rest of the Government of Venezuela) or (ii) the terms of repayment are not modified after August 25, 2017. Any changes to the length of the repayment period, the interest applied, or the maximum drawdown amount after August 25, 2017 would constitute a change in repayments terms.

Bonds

As noted above, E.O. 13808 also prohibits all dealings in bonds issued by the Government of Venezuela prior to August 25, 2017, the sanctions effective date. General License 3, discussed in more detail below, provides limited authorization to engage in such transactions.

Dividend Payments

As a result of the issuance of E.O. 13808, all transactions related to, provision of financing for, and other dealings in, dividend payments or other distributions of profits to the Venezuelan government from any entity that the Venezuelan government owns or controls, either directly or indirectly, are prohibited. Certain reports suggest that this prohibition is

aimed at preventing CITGO Holding, Inc. (“Citgo”), a PdVSA subsidiary in the United States, from repatriating profits to the Government of Venezuela.

Securities

The Executive Order prohibits United States persons and any person in the United States from purchasing, directly or indirectly, securities from the Government of Venezuela, unless such securities qualify as new debt of PdVSA with a maturity of less than or equal to 90 days, or new debt of any other part of the Government of Venezuela with a maturity of less than or equal to 30 days. In its FAQs, OFAC clarified that the Executive Order prohibits U.S. persons from purchasing equity securities from the Government of Venezuela, including in those instances where those equity securities were issued by a non-sanctioned party.

General Licenses

In conjunction with the issuance of the Executive Order, OFAC issued four general licenses related to E.O. 13808, which authorize the following: (i) activities necessary to wind down existing contracts, (ii) certain transactions with Citgo, (iii) transactions related to, provision of financing for, and other dealings in certain bonds, and (iv) transactions related to, provision of financing for, and other dealings in the exportation or reexportation of agricultural commodities, medicine, medical devices, or replacement parts and components.

Each of these general licenses is discussed in more detail below.

General License 1 – Authorizing Certain Wind Down Transactions

General License 1 (“GL 1”) authorizes transactions ordinarily incident and necessary to wind down contracts or other agreements that were in effect prior to August 25, 2017. GL 1, however, does not authorize those transactions related 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. GL 1 is currently set to expire on September 24, 2017.

Any U.S. persons participating in the transactions authorized by GL 1 must file a detailed report with OFAC within 10 business days after the transactions take place. The report should include the following information: (i) the parties involved, (ii) the value of the transactions, and (iii) the dates of the transactions.

General License 2 – Authorizing Certain Transactions Involving Citgo

General License 2 (“GL 2”) authorizes nearly all the transactions discussed above where the only Government of Venezuela entities involved are Citgo or any of its subsidiaries. United States persons or persons within the United States, however, remain prohibited from engaging in transactions related to, provision of financing for, or other dealings in the following, even in those instances where the only Government of Venezuela entities involved in a transaction are Citgo or any of its subsidiaries: (i) bonds issued by the Government of Venezuela prior to August 25, 2017 (except as permitted by General License 3) and (ii) 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.

General License 3 – Authorizing Certain Bonds

General License 3 (“GL 3”) authorizes all transactions related to, the provision of financing for, and other dealings in certain bonds that would otherwise be prohibited by the Executive Order. The bonds subject to GL 3 are listed in an annex to the general license.

GL 3 also authorizes all transactions related to, the provision of financing for, and other dealings in bonds that were issued: (i) prior to August 24, 2017 and (ii) by U.S. person entities owned or controlled, directly or indirectly, by the Government of Venezuela.

General License 4 – Authorizing Transactions Related to Certain Exports and Reexports

Subject to certain limitations, General License 4 (“GL 4”) authorizes all transactions related to, the provision of financing for, and other dealings in new debt related to the exportation or reexportation, from the United States or by a U.S. person, wherever located, 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.

Note that any exporter seeking to use GL 4 should ensure that any exports or reexports are licensed or otherwise authorized by the Department of Commerce’s Bureau of Industry and Security.

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