

United States Increases Pressure on Venezuela

In response to the human rights abuses and corruption of Venezuelan President Nicolas Maduro's government and to what is widely perceived to be an illegitimate takeover of Venezuela's democratically elected National Assembly, the United States has imposed its first direct economic sanctions against Venezuela. Whereas previous sanctions relating to Venezuela had been limited to designating a number of individuals on the Specially Designated Nationals (SDN) list, in an executive order that went into effect on August 25, 2017, the Trump administration effectively restricted the Government of Venezuela and Venezuela's state oil company, *Petróleos de Venezuela, S.A. (PDVSA)*, from access to U.S. financial markets. More specifically, *Executive Order 13808* prohibits U.S. persons from engaging in transactions related to:

- The provision of financing for or dealing in new debt with a maturity longer than 90 days by or for the benefit of PDVSA;
- The provision of financing for or dealing in new debt with a maturity of greater than 30 days issued by or for the benefit of the Government of Venezuela (excluding PDVSA);
- New equity issued by the Government of Venezuela (including PDVSA);
- Bonds issued by the Government of Venezuela prior to August 25, 2017 (with defined exceptions);
- Dividend payments or distribution of profits to the Government of Venezuela from any entity owned or controlled by the Government of Venezuela.
- The purchase of securities from the Government of Venezuela (whether or not issued by the Government of Venezuela) other than the new short term debt described above.

Coinciding with the publication of the executive order, the Office of Foreign Assets Control (OFAC) published four general licenses that provide some noteworthy carve outs from the prohibitions.

- General License 1 (Authorizing Certain Activities Necessary to Wind Down Existing Contracts) provides a 30-day wind-down period and authorizes U.S. persons to take action during this period to extricate themselves from existing agreements relating to problematic Venezuelan debt and/or equity.
- General License 2 (Authorizing Certain Transactions Involving CITGO Holding, Inc.) provides an exception from the prohibitions "where the only Government of Venezuela entities involved are CITGO Holding, Inc. and any of its subsidiaries." Thus, there are no restrictions with respect to U.S. persons transacting business with CITGO (which is itself a U.S. entity).
- General License 3 (Authorizing Transactions Related to, Provision of Financing for, and Other Dealings in Certain Bonds) authorizes the continued transactions by U.S. persons relating to specific bonds listed in an annex to the general license. It also authorizes continued transactions with respect to bonds that were issued by U.S. entities owned or controlled by the Government of Venezuela (e.g., CITGO) before August 25.
- General License 4 (Authorizing New Debt Transactions Related to the Exportation or Re-exportation of Agricultural Commodities, Medicine, Medical Devices, or Replacement Parts and Components) authorizes all financing transactions relating to the export of agricultural commodities, medicine, or medical devices to Venezuela.

It is important to note that the prohibitions apply to **new** debt and equity, i.e., debt or equity issued subsequent to the effective date of the executive order. U.S. persons may continue to engage in transactions involving equity issued by the Government of Venezuelan as long as it was issued prior to August 25. Transactions relating to debt are permissible if the debt, other than bond debt, was issued prior to August 25. In the case of bonds, transactions are permissible if the bonds are covered by General License 3 (i.e., either the bonds are included on the whitelist of authorized bonds, or the bonds were issued by U.S. entities owned or controlled by the Government of



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Venezuela, such as CITGO Holdings, Inc.). Per OFAC guidance, care should be taken with the rollover of existing debt, in that the rollover would be considered to be creating new debt and the terms would have to fall within the permissible 30- or 90-day maturity limits.

It should also be noted that the executive order does not designate any of the entities as SDNs. U.S. persons are not prohibited from transacting business generally with either the Government of Venezuela or any of its agencies, including PDVSA, nor are they required to block any assets. U.S. persons are simply required to refrain from engaging in the prohibited transactions.¹

Venezuela will continue to be able to export crude oil to U.S. refineries, and CITGO, PDVSA's U.S. affiliate, will still be able to finance import and export transactions involving Venezuela. However, CITGO will not be able to repatriate any of its profits back to the Venezuelan government. Thus, the program limits the Maduro government's access to cash but stops well short of prohibiting Venezuelan oil imports to the United States, an act that could have increased U.S. gasoline prices.

While it is generally assumed that the new sanctions will increase pressure on the Maduro government and further impair its ability to make interest payments on its existing debt, they are unlikely to have significant short term effect in either Venezuela or the United States. Many U.S. banks are already reluctant to engage with Venezuela due to fear of default and the potential for reputational damage. Regardless of their actual impact, however, the imposition of sanctions will certainly intensify the rhetorical war between Washington and Caracas and could lead to further action by either. We will continue to monitor the situation and report as events unfold.

Should you have any questions regarding U.S. policy with regards to Venezuela or other sanctions programs, please do not hesitate to contact a member of Cozen O'Connor's Transportation & Trade Department.

¹ While the present executive order does not preclude U.S. persons from transactions with the Government of Venezuela generally, a number of government officials have been placed on the SDN list pursuant to other executive orders or sanctions programs. U.S. persons conducting transactions in Venezuela should take precautions to ensure compliance with U.S. sanctions regulations.