

# Alert

## Sanctions Update: U.S. Imposes Immediate Restrictions Relating to Venezuelan Securities

August 28, 2017

On Aug. 24, 2017, President Trump issued an Executive Order, “Imposing Additional Sanctions with Respect to the Situation in Venezuela,”<sup>1</sup> in reaction to recent actions and policies of the Government of Venezuela, including human rights abuses, a deepening humanitarian crisis, the establishment of an illegitimate government body, rampant public corruption, and persecution of the political opposition. The new sanctions prohibit U.S. persons from dealing in securities of the Government of Venezuela, including new debt of certain maturities, new equity, and previously issued government bonds, subject to certain exceptions set forth in general licenses issued concurrently by the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”). Although the sanctions take effect immediately, OFAC has provided a 30-day wind-down period for U.S. firms to exit existing contracts and to engage in certain otherwise prohibited transactions as part of the wind-down. As explained below, a detailed report must be filed with OFAC within 10 days of engaging in such a transaction. U.S. investors and U.S. financial services firms are urged to pay close attention to the new prohibitions.

The Executive Order applies to U.S. persons and to transactions within the U.S. Subsection 1(a) prohibits “[a]ll transactions related to, provision of financing for, and other dealings” in: (i) new debt with a maturity of greater than 90 days issued by, on behalf of, or for the benefit of Petroleos de Venezuela, S.A. (“PdVSA”); (ii) new debt with a maturity of greater than 30 days, or new equity, of the Government of Venezuela;<sup>2</sup> (iii) bonds issued by the Government of Venezuela prior to Aug. 25, 2017; and (iv) 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.

Subsection 1(b) prohibits the “purchase, directly or indirectly, of securities from the Government of Venezuela,” other than the securities described in Subsection 1(a)(i) and (ii), which securities are governed by those sections.

Subsection 2(a) prohibits “[a]ny transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in” the Executive Order. In addition, Subsection 2(b) prohibits conspiracy to violate the Executive Order.

<sup>1</sup> An electronic copy of the Executive Order “Imposing Additional Sanctions with Respect to the Situation in Venezuela” is available [here](#).

<sup>2</sup> The term “Government of Venezuela” is defined as “the Government of Venezuela, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Venezuela and PdVSA, and any person owned or controlled by, or acting for or on behalf of, the Government of Venezuela.” See Subsection 3 (d) of the Executive Order. This includes entities owned 50 percent or more by the Government of Venezuela.

Separately, on Aug. 25, 2017, OFAC published four general licenses authorizing certain transactions that would otherwise be prohibited under the new Executive Order:

- **General License 1 – Authorizing Certain Activities Necessary to Wind Down Existing Contracts.**<sup>3</sup> General License 1 applies to contracts and other agreements effective prior to Aug. 25, 2017, and provides a 30 day wind-down period in which to conduct all transactions and activities otherwise prohibited by Subsections 1(a)(i)-(iii) and (b) of the Executive Order, as long as ordinarily incident and necessary to the winding down of such agreements.<sup>4</sup> Within 10 business days after a transaction authorized by General License 1 takes place, a detailed report – including information on the parties involved, the value of the transactions, and the dates of the transactions – must be filed with OFAC.
- **General License 2 – Authorizing Certain Transactions Involving CITGO Holding Inc.**<sup>5</sup> General License 2 authorizes all transactions otherwise prohibited by Subsections 1(a)(i), (a)(ii), and (b) of the Executive Order, provided that the only Government of Venezuela entities involved in the transactions are CITGO Holding, Inc. and any of its subsidiaries.<sup>6</sup>
- **General License 3 – Authorizing Transactions Related to, Provision of Financing for, and Other Dealings in Certain Bonds.**<sup>7</sup> General License 3 authorizes bond dealings that would otherwise be prohibited by Section 1(a)(iii) if contained on the “List of Authorized Venezuela-Related Bonds.” The list is appended to General License 3. The list authorizes a large number of bonds issued by the Government of Venezuela prior to Aug. 25, 2017, including at least 17 bonds issued by PdVSA. General License 3 further authorizes bond dealings issued prior Aug. 25, 2017, if such bonds were issued by U.S. person entities owned or controlled by the Government of Venezuela, such as CITGO Holding, Inc.<sup>8</sup>
- **General License 4 – Authorizing New Debt Transactions Related to the Exportation or Reexportation of Agricultural Commodities, Medicine, Medical Devices, or Replacement Parts and Components.**<sup>9</sup> General License 4 authorizes 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, provided that the exportation or reexportation is licensed or otherwise authorized by the Department of Commerce.<sup>10</sup>

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<sup>3</sup> General License 1, “[Authorizing Certain Activities Necessary to Wind Down Existing Contracts](#)” (Aug. 25, 2017).

<sup>4</sup> See FAQs at \*2, available [here](#).

<sup>5</sup> General License 2, “[Authorizing Certain Transactions Involving CITGO Holding Inc.](#)” (Aug. 25, 2017).

<sup>6</sup> See FAQs at \*2, available [here](#).

<sup>7</sup> General License 3, “[Authorizing Transactions Related to, Provision of Financing for, and Other Dealings in Certain Bonds](#)” (Aug. 25, 2017).

<sup>8</sup> See FAQs at \*2, available [here](#).

<sup>9</sup> General License 4, “[Authorizing New Debt Transactions Related to the Exportation or Reexportation of Agricultural Commodities, Medicine, Medical Devices, or Replacement Parts and Components](#)” (Aug. 25, 2017).

<sup>10</sup> See FAQs at \*2, available [here](#).

OFAC also published a number of Frequently Asked Questions (FAQs) regarding the Executive Order and associated general licenses.<sup>11</sup> Among other things, the FAQs clarify that the Venezuelan people are not subject to U.S. sanctions (with the exception of Specially Designated Nationals) and that dealings with the Venezuelan government are not completely prohibited.<sup>12</sup> For example, U.S. financial institutions may continue to maintain correspondent accounts and process U.S. dollar-clearing transactions for the Venezuelan government, so long as those activities do not involve engaging in prohibited transactions.<sup>13</sup> The FAQs also elaborate on what OFAC considers to be “new debt” and “new equity” and how the sanctions apply in the context of revolving credit and long-term loan facilities and rollovers of existing debt.<sup>14</sup>

The new sanctions do not require U.S. persons to block property or property interests of the Venezuelan government. Rather, U.S. persons are required to reject transactions that are prohibited under the Executive Order and, to the extent required by law, file a rejected transaction report with OFAC within ten business days.<sup>15</sup>

The FAQs further explain that the sanctions are being imposed because the Venezuelan government has been selling assets, including bonds and other securities, “for much less than they are worth at the expense of the Venezuelan people and using proceeds from those sales to enrich supporters of the regime.” The new prohibitions are designed “to prevent U.S. persons from contributing to the Government of Venezuela’s corrupt and shortsighted financing schemes while mitigating market disruptions and harm to investors.”<sup>16</sup>

*Authored by [Seetha Ramachandran](#), [Betty Santangelo](#), [Gary Stein](#), [Jennifer M. Opheim](#), [Mari S. Dopp](#) and [Rebecca Morrow](#).*

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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<sup>11</sup> OFAC’s FAQs regarding the new Executive Order and associated general licenses are available [here](#).

<sup>12</sup> See FAQs at \*6, available [here](#).

<sup>13</sup> See FAQs at \*3-4, available [here](#).

<sup>14</sup> *Id.*

<sup>15</sup> See FAQs at \*1-2, available [here](#).

<sup>16</sup> See FAQs at \*4, available [here](#).